

1 Tharan Gregory Lanier (SBN 138784)
2 tglanier@jonesday.com
3 Greg L. Lippetz (SBN 154228)
4 glippetz@jonesday.com
5 Nathaniel P. Garrett (State Bar No. 248211)
6 ngarrett@JonesDay.com
7 Paul C. Hines (State Bar No. 294428)
8 phines@jonesday.com
9 JONES DAY
10 555 California Street, 26th Floor
11 San Francisco, CA 94104
12 Telephone: +1.415.626.3939
13 Facsimile: +1.415.875.5700

14 Sharyl A. Reisman (Admitted *Pro Hac Vice*)
15 sareisman@JonesDay.com
16 JONES DAY
17 250 Vesey Street
18 New York, NY 10281.1047
19 Telephone: +1.212.326.3939
20 Facsimile: +1.212.755.7306

21 Attorneys for Plaintiff and Crossclaim-Defendant
22 CALIFORNIA BERRY CULTIVARS, LLC and Cross-
23 Defendants DOUGLAS SHAW and KIRK LARSON

24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

29 CALIFORNIA BERRY CULTIVARS, LLC,

30 Plaintiff,

31 v.

32 THE REGENTS OF THE UNIVERSITY OF
33 CALIFORNIA,

34 Defendant.

35 THE REGENTS OF THE UNIVERSITY OF
36 CALIFORNIA,

37 Cross-Complainant,

38 v.

39 CALIFORNIA BERRY CULTIVARS, LLC,
40 DOUGLAS SHAW, AND KIRK LARSON,

41 Cross-Defendants.

42 **Case No. 3:16-cv-02477-VC**

43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
3310
3311
3312
3313
3314
3315
3316
3317
3318
3319
33110
33111
33112
33113
33114
33115
33116
33117
33118
33119
331110
331111
331112
331113
331114
331115
331116
331117
331118
331119
3311110
3311111
3311112
3311113
3311114
3311115
3311116
3311117
3311118
3311119
33111110
33111111
33111112
33111113
33111114
33111115
33111116
33111117
33111118
33111119
331111110
331111111
331111112
331111113
331111114
331111115
331111116
331111117
331111118
331111119
3311111110
3311111111
3311111112
3311111113
3311111114
3311111115
3311111116
3311111117
3311111118
3311111119
33111111110
33111111111
33111111112
33111111113
33111111114
33111111115
33111111116
33111111117
33111111118
33111111119
331111111110
331111111111
331111111112
331111111113
331111111114
331111111115
331111111116
331111111117
331111111118
331111111119
3311111111110
3311111111111
3311111111112
3311111111113
3311111111114
3311111111115
3311111111116
3311111111117
3311111111118
3311111111119
33111111111110
33111111111111
33111111111112
33111111111113
33111111111114
33111111111115
33111111111116
33111111111117
33111111111118
33111111111119
331111111111110
331111111111111
331111111111112
331111111111113
331111111111114
331111111111115
331111111111116
331111111111117
331111111111118
331111111111119
3311111111111110
3311111111111111
3311111111111112
3311111111111113
3311111111111114
3311111111111115
3311111111111116
3311111111111117
3311111111111118
3311111111111119
33111111111111110
33111111111111111
33111111111111112
33111111111111113
33111111111111114
33111111111111115
33111111111111116
33111111111111117
33111111111111118
33111111111111119
331111111111111110
331111111111111111
331111111111111112
331111111111111113
331111111111111114
331111111111111115
331111111111111116
331111111111111117
331111111111111118
331111111111111119
3311111111111111110
3311111111111111111
3311111111111111112
3311111111111111113
3311111111111111114
3311111111111111115
3311111111111111116
3311111111111111117
3311111111111111118
3311111111111111119
33111111111111111110
33111111111111111111
33111111111111111112
33111111111111111113
33111111111111111114
33111111111111111115
33111111111111111116
33111111111111111117
33111111111111111118
33111111111111111119
331111111111111111110
331111111111111111111
331111111111111111112
331111111111111111113
331111111111111111114
331111111111111111115
331111111111111111116
331111111111111111117
331111111111111111118
331111111111111111119
3311111111111111111110
3311111111111111111111
3311111111111111111112
3311111111111111111113
3311111111111111111114
3311111111111111111115
3311111111111111111116
3311111111111111111117
3311111111111111111118
3311111111111111111119
33111111111111111111110
33111111111111111111111
33111111111111111111112
33111111111111111111113
33111111111111111111114
33111111111111111111115
33111111111111111111116
33111111111111111111117
33111111111111111111118
33111111111111111111119
331111111111111111111110
331111111111111111111111
331111111111111111111112
331111111111111111111113
331111111111111111111114
331111111111111111111115
331111111111111111111116
331111111111111111111117
331111111111111111111118
331111111111111111111119
3311111111111111111111110
3311111111111111111111111
3311111111111111111111112
3311111111111111111111113
3311111111111111111111114
3311111111111111111111115
3311111111111111111111116
3311111111111111111111117
3311111111111111111111118
3311111111111111111111119
33111111111111111111111110
33111111111111111111111111
33111111111111111111111112
33111111111111111111111113
33111111111111111111111114
33111111111111111111111115
33111111111111111111111116
33111111111111111111111117
33111111111111111111111118
33111111111111111111111119
331111111111111111111111110
331111111111111111111111111
331111111111111111111111112
331111111111111111111111113
331111111111111111111111114
331111111111111111111111115
331111111111111111111111116
331111111111111111111111117
331111111111111111111111118
331111111111111111111111119
3311111111111111111111111110
3311111111111111111111111111
3311111111111111111111111112
3311111111111111111111111113
3311111111111111111111111114
3311111111111111111111111115
3311111111111111111111111116
3311111111111111111111111117
3311111111111111111111111118
3311111111111111111111111119
33111111111111111111111111110
33111111111111111111111111111
33111111111111111111111111112
33111111111111111111111111113
33111111111111111111111111114
33111111111111111111111111115
33111111111111111111111111116
33111111111111111111111111117
33111111111111111111111111118
33111111111111111111111111119
331111111111111111111111111110
331111111111111111111111111111
331111111111111111111111111112
331111111111111111111111111113
331111111111111111111111111114
331111111111111111111111111115
331111111111111111111111111116
331111111111111111111111111117
331111111111111111111111111118
331111111111111111111111111119
3311111111111111111111111111110
3311111111111111111111111111111
3311111111111111111111111111112
3311111111111111111111111111113
3311111111111111111111111111114
3311111111111111111111111111115
3311111111111111111111111111116
3311111111111111111111111111117
3311111111111111111111111111118
3311111111111111111111111111119
33111111111111111111111111111110
33111111111111111111111111111111
33111111111111111111111111111112
33111111111111111111111111111113
33111111111111111111111111111114
33111111111111111111111111111115
33111111111111111111111111111116
33111111111111111111111111111117
33111111111111111111111111111118
33111111111111111111111111111119
331111111111111111111111111111110
331111111111111111111111111111111
331111111111111111111111111111112
331111111111111111111111111111113
331111111111111111111111111111114
331111111111111111111111111111115
331111111111111111111111111111116
331111111111111111111111111111117
331111111111111111111111111111118
331111111111111111111111111111119
3311111111111111111111111111111110
3311111111111111111111111111111111
3311111111111111111111111111111112
3311111111111111111111111111111113
3311111111111111111111111111111114
3311111111111111111111111111111115
3311111111111111111111111111111116
3311111111111111111111111111111117
3311111111111111111111111111111118
3311111111111111111111111111111119
33111111111111111111111111111111110
33111111111111111111111111111111111
33111111111111111111111111111111112
33111111111111111111111111111111113
33111111111111111111111111111111114
33111111111111111111111111111111115
33111111111111111111111111111111116
33111111111111111111111111111111117
33111111111111111111111111111111118
33111111111111111111111111111111119
331111111111111111111111111111111110
331111111111111111111111111111111111
331111111111111111111111111111111112
331111111111111111111111111111111113
331111111111111111111111111111111114
331111111111111111111111111111111115
331111111111111111111111111111111116
331111111111111111111111111111111117
331111111111111111111111111111111118
331111111111111111111111111111111119
3311111111111111111111111111111111110
3311111111111111111111111111111111111
3311111111111111111111111111111111112
3311111111111111111111111111111111113
3311111111111111111111111111111111114
3311111111111111111111111111111111115
3311111111111111111111111111111111116
3311111111111111111111111111111111117
3311111111111111111111111111111111118
3311111111111111111111111111111111119
33111111111111111111111111111111111110
33111111111111111111111111111111111111
33111111111111111111111111111111111112
33111111111111111111111111111111111113
33111111111111111111111111111111111114
33111111111111111111111111111111111115
33111111111111111111111111111111111116
33111111111111111111111111111111111117
33111111111111111111111111111111111118
33111111111111111111111111111111111119
331111111111111111111111111111111111110
3311111111111111111111111111111111111111
3311111111111111111111111111111111111112
3311111111111111111111111111111111111113
3311111111111111111111111111111111111114
3311111111111111111111111111111111111115
3311111111111111111111111111111111111116
3311111111111111111111111111111111111117
3311111111111111111111111111111111111118
3311111111111111111111111111111111111119
33111111111111111111111111111111111111110
33111111111111111111111111111111111111111
33111111111111111111111111111111111111112
33111111111111111111111111111111111111113
33111111111111111111111111111111111111114
33111111111111111111111111111111111111115
33111111111111111111111111111111111111116
33111111111111111111111111111111111111117
3311111111

1 California Berry Cultivars, LLC, Douglas Shaw, and Kirk Larson (collectively, “CBC”)
 2 respectfully request this Court deny the motion by The Regents of the University of California
 3 (“UC”) (“UC’s Motion”) to exclude expert testimony by David Nolte (“Nolte”).

4 Nolte opined on the appropriate amount to award CBC in damages arising from UC’s
 5 interference and destruction of CBC’s intellectual property rights in the Transition Cultivars and
 6 Core Strawberry Germplasm (as defined in CBC’s Verified Complaint, ECF 2-2 at 22, and
 7 collectively referred to as “Plant Types-at-Issue”). UC Ex.¹ 1, CBC Ex.² A. Nolte’s
 8 methodology for computing CBC’s damages was standard and conventional. He contrasted the
 9 but-for world in which CBC could exercise its intellectual property rights in the Plant Types-at-
 10 Issue starting in December 2014 with the actual world in which CBC is denied the intellectual
 11 property rights to that material. By the time of trial in May 2017 that delay will have resulted in
 12 at least 3 years of plant development interruption and, of course, for the more than 400 destroyed
 13 genotypes, the delay is permanent and infinite. Even for preserved material, the delay may be
 14 much longer and is in UC’s hands. This delay is a fact, not an assumption.

15 Nolte also considered that when starting from scratch, the range of time from crossing to
 16 release for commercialization of a new variety is around eight years. He did not assume this.
 17 That testimony abounds in the record. *See, e.g.*, UC Ex. 5 at 147:9-12; CBC Ex. B at 163:2-7
 18 (agreeing that the range is somewhere between five and eight years). That norm would suggest
 19 that for crosses beginning in December 2014, the first new cultivar would be commercialized by
 20 about 2022, eight years. Because CBC would not have been starting from scratch, Nolte adopted
 21 the shorter end of the cycle range and started his damage calculation with commercialization with
 22 the first missing cultivar in the but-for world in 2019. The Plant Types-at Issue had already been
 23 analyzed to some extent and the Plant Types-at-Issue resulted from crosses that took place no
 24 later than 2012. UC does not complain about this assumption, which is not contradicted by

25 ¹ References to “UC Ex.” refer to exhibits to the Declaration of Matthew Chivvis In
 26 Support of the University’s Motion to Exclude Expert Testimony by David Nolte Under FRE 702
 dated April 17, 2017.

27 ² References to “CBC Ex.” refer to exhibits to the Declaration of Alexis A. Smith In
 28 Support of CBC’s Opposition to the University’s Motion to Exclude Expert Testimony by David
 Nolte Under FRE 702 dated April 24, 2017.

1 evidence.

2 Consistent with the testimony and past experience of the Doctors, who introduced one
 3 new cultivar per year on average, Nolte projected in his calculations that same frequency of new
 4 cultivars, just as UC's expert Carrie Distler ("Distler") did. *See* CBC Distler Ex.³ 2 at ¶ 51.
 5 Unlike UC's Distler who projected royalty revenue from new cultivar development would extend
 6 into perpetuity, (CBC Distler Ex. 2 at ¶ 34, CBC Distler Ex. 3 at 318:13-20), Nolte cut-off
 7 computing damages for new cultivars after eight new cultivars were introduced. Had he projected
 8 more cultivars, he would have increased CBC's damages for those lost sales, but instead he
 9 conservatively stopped after the introduction of the eighth new cultivar in 2026. Ending the time
 10 for the introduction of new cultivars was an assumption highly favorable to UC. There is no
 11 contrary evidence and UC does not and cannot complain about that assumption.

12 Finally, Nolte treats the but-for world of the missing Plant Types-at-Issue separately from
 13 the development (or non-development) of the progeny of the International Semillas crosses.
 14 There is no evidence to suggest CBC would not be able to have parallel breeding operations with
 15 those International Semillas seed selections. Nolte does not assume the existence or non-
 16 existence of a parallel breeding operations. He properly analyzes harm to CBC for the loss of the
 17 intellectual property rights to the Plant Types-at-Issue, irrespective of whatever happens to the
 18 International Semillas crosses. CBC is not "capacity constrained" from carrying out two breeding
 19 operations in parallel. No evidence exists to suggest that two parallel breeding efforts would not
 20 be operationally feasible or economically desirable.

21 Nolte's opinion is a product of reliable principles and methods applied to assumptions that
 22 are factually supported; his opinion is consistent with the requirements of Fed. R. Evid. 702; and
 23 is the type of expert testimony that is routinely admitted to aid the trier of fact in assessing
 24 damages. *See e.g. Alaska Rent-A-Car, Inc. v. Avis Budget Group, Inc.*, 738 F.3d 960, 969 (9th
 25 Cir. 2013) (affirming a lower court's admission of expert testimony on damages and explaining
 26 that "[e]xpert opinion testimony is relevant if the knowledge underlying it has a valid connection

27 ³ References to "CBC Distler Ex." refer to exhibits to the Declaration of Alexis A. Smith
 28 In Support of CBC's Notice of Motion and Motion to Exclude the Testimony and Opinions of
 UC's Expert Carrie Distler dated April 17, 2017.

1 to the pertinent inquiry") (quotations omitted). At most, UC's quarrel with the reasonableness of
 2 the assumptions and facts underlying Nolte's opinions is a matter to be handled by cross-
 3 examination, not exclusion. *See, e.g., Dorn v. Burlington N. Santa Fe R.R. Co.*, 397 F.3d 1183,
 4 1196 (9th Cir. 2005) (holding "the reasonableness of the assumptions underlying the experts' ...
 5 analysis, [or] criticisms of an expert's method of calculation [are] matter[s] for the jury's
 6 consideration in weighing that evidence") (quotations omitted); *see also Summit 6, LLC v.*
 7 *Samsung Elecs. Co.*, 802 F.3d 1283, 1296 (Fed. Cir. 2015) (noting that "the question of whether
 8 the expert is credible or the opinion is correct is generally a question for the fact finder, not the
 9 court") (citations omitted). Much of UC's challenge is based on playing word games with the
 10 word "delay" – delay in getting the material, delay (or time) to develop new cultivars, or
 11 contrasting the time differences projected for the progeny of Spanish crosses with the time for
 12 introducing cultivars expected from the Transition Cultivar development. His method and
 13 calculations defy such word game confusion.

14 **A. NOLTE'S OPINIONS ARE GROUNDED IN FACT.**

15 Nolte estimated CBC's damages, not by taking a paper projection as UC's Distler did, but
 16 by looking to historical *actual sales* of cultivars that were invented by the very same breeders,
 17 Drs. Shaw and Larson (the "Doctors"). *See*, CBC Ex. A at p. 5 & Ex. 5 pp. 4-6; CBC Distler Ex.
 18 2 at ¶ 33, Schs. 13a, 13b. The Doctors would have developed new cultivars from the Plant
 19 Types-at-Issue at CBC but-for UC's wrongful conduct. Nolte projected the sales of those new
 20 cultivars by looking to the actual sales data for other cultivars invented by the Doctors that had at
 21 least five years of licensing history. UC Ex. 1 at p. 3, C.2; CBC Ex. F at 39:12-25, 40:21-25;
 22 CBC Ex. A at Ex. 5 pp. 4-6.⁴ There should be no dispute about the accuracy of the data
 23 underlying Nolte's opinions, as that data was provided by UC. *See e.g.*, UC Ex. 1 at p. 4 (citing
 24 reliance upon UC STRAW2 00058007, UC STRAW2 0075844, UC STRAW2 00075847, and
 25 UC STRAW2 00075842, all of which were produced by UC).

26 UC's reliance on *Benjamin v. Peter's Farm Condominium Owners Ass'n*, 820 F.2d 640

27
 28

⁴ This exhibit was omitted from the copy of Nolte's March 9, 2017 report that UC filed as Exhibit to its motion, so it is attached as CBC Ex. A.

1 (1987) is inapposite. In *Benjamin*, the economic expert opined on an injured party's post-injury
 2 earning capacity. *Id.* The expert calculated damages in reliance on the plaintiff's personal and
 3 unproven and subjective belief as to his post-injury earning capacity, despite the complete lack of
 4 evidence or actual data to support that amount. *Id.* at 641-43. That is not the case here.⁵ Nolte
 5 appropriately looked to *objective* evidence of past sales of the Doctors' cultivars to calculate sales
 6 of new cultivars based on a plethora of evidence and actual data to support that amount. *See*
 7 *January v. Dr Pepper Snapple Group, Inc.*, 594 Fed. Appx. 907, 911 (9th Cir. 2014) (unpublished
 8 decision) (admitting expert opinion regarding the plaintiff's lost overtime wages based upon
 9 consideration of the plaintiff's past overtime wages).

10 **B. NOLTE'S OPINIONS APPLY REASONABLE METHODOLOGIES TO
 11 THE FACTS OF THE CASE TO DETERMINE CBC'S DAMAGES.**

12 Nolte's opinions are based on *real* data produced by UC. *See, e.g.*, CBC Ex. A (citing
 13 reliance upon UC STRAW2 00058007). In his first report, Nolte based his damages calculations
 14 on the past revenues (in dollars) received for sales of the Doctors' cultivars. He noted that the
 15 analysis would underestimate damages because "UC's rates have changed over time" and that a
 16 "more accurate calculation would consider the actual units." UC Ex. 1 at p. 5. Shortly after his
 17 first report and after having sufficient time to review information about unit sales that UC
 18 designated under the protective order, he recalculated CBC's damages based on actual unit sales
 19 data for increased accuracy. *See* CBC Ex. A at p. 2.

20 UC twists Nolte's statement that "just the drafting time" took "something in the vicinity of
 21 two days," UC Ex. 2 at 8:4-8, to assert that "he spent only two days on the entire process of
 22 reviewing the information on which he supposedly relied, analyzing it, forming his opinions, and
 23 drafting his initial eight page disclosure." UC Motion at 2. This is not so. He spent considerably
 24 more time for the entire process resulting in his opinions. Nolte reviewed relevant evidence prior

25

 26 ⁵ UC's reliance on *McGlinch v. Shell Chemical Co.*, 845 F.2d 802 (1988) is similarly
 27 misplaced. *McGlinch* involved an expert who forecasted lost sales by starting with "divined"
 28 future sales and working backwards by plugging in whatever compound growth rate would work
 (in that case using a 41% compound annual growth rate) to link his "divined" damages figure to
 actual past sales. *Id.* at 807. UC makes no similar contention here, nor could it. Nolte started by
 looking to past sales and then applied a modest 4% long term growth rate to calculate the future
 lost sales. UC Ex. 1 at 7; CBC Ex. A at Ex. 5 p.1 n.2 & p. 2 n.2. *McGlinch* is utterly irrelevant.

1 to CBC's request to share UC-designated Highly Confidential – Attorneys' Eyes Only
 2 ("HCAEO") materials. Only the UC-designated "HCAEO" materials were unavailable until UC
 3 confirmed it did not object to disclosure of materials to Nolte. Since much of the relevant data for
 4 UC strawberry sales is publicly available or in the possession of Doug Shaw, Nolte was able to
 5 analyze relevant information and begin preparing his calculations in advance of UC's
 6 confirmation. *See, e.g.*, CBC Ex. C at UC_STRAW2_00077144 (showing "Gross Strawberry
 7 Licensing Revenue" by year since 2004). He also continued his analysis in preparing his
 8 supplemental report.

9 It is true that Nolte confirmed various key facts by interviewing Dr. Shaw and Lucky
 10 Westwood, but reliance on witnesses to inform him of testimony that will be adduced at trial is
 11 not improper. *See, e.g.*, *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993) (stating
 12 that "an expert is permitted wide latitude to offer opinions, including those that are not based on
 13 firsthand knowledge or observation"); *see also* 7 Annotated Patent Digest § 44:46.50 ("an expert
 14 opinion does not become fatally inadmissible just because the expert assumed a certain set of
 15 facts").

16 And, those key facts are all supported in the record. For example, Drs. Shaw and Larson
 17 retired from UC in November 2014. *See, e.g.*, ECF 155 at 181:23-182:6. Around the time of the
 18 Doctors' retirement, there were more than 800 Transition Cultivars and 168 varieties in the Core
 19 Strawberry Germplasm that were subject to an omnibus patent application. ECF 145-21 at 31-32;
 20 CBC Distler Exs. 15 & 16; ECF 173-26 at 2. The Doctors invented all of the nine cultivars
 21 (Camino Real, Ventana, Albion, Palomar, Monterey, San Andreas, Portola, Benicia, and Mojave),
 22 the sales of which were utilized by Nolte to predict the average sales per cultivar for the eight
 23 missing cultivars. ECF 145-13 at 55, 64, 73, 81, 89, 96, 104, 111, 120. The average time from
 24 making the first crosses to commercial release of a cultivar is six to eight years. *See, e.g.*, UC Ex.
 25 5 at 147:9-12. Finally, the Doctors historically generated an average of one cultivar per year for
 26 commercial release. *See* ECF 145-13; CBC Distler Ex. 9; ECF 145-48 at 3; CBC Distler Ex. 1 at
 27 ¶ 14 (identifying that the Drs. Shaw and/or Larson "patent[ed] and releas[ed] for
 28 commercialization at least 24" patented cultivars during their tenure (which was 28 years for Dr.

1 Shaw and 23 years for Dr. Larson)). In sum, there is an abundance of factual support for Mr.
 2 Nolte's opinion.

3 **1. Nolte Assumes CBC Starts A Breeding Program Without Access To**
The 168 CSG And 800 TCs, Which Is An Undisputed Fact.

4 Nolte opined on CBC's damages resulting from UC's interference and destruction of
 5 CBC's intellectual property rights in the 968 Plant Types-at-Issue (800 Transition Cultivars and
 6 168 Core Strawberry Germplasm). It is undisputed that upon retirement the Doctors were forced
 7 to leave behind all the Plant Types-at-Issue in which they had intellectual property interest and
 8 now UC has destroyed at least 400 of those (CBC Ex. D at 242:1-19) without having notified the
 9 intellectual property owners, sought their permission, or offering to make the material available to
 10 CBC before the Doctors' creations and the unique genotypes were lost forever. *See, e.g.*, ECF
 11 155-9 at 2 ("[The Doctors] left all genetic materials on site at the UC"); CBC Ex. E at
 12 CBC00004796 (where interim Dean Delany said "we will not be transferring the transition
 13 cultivars or strawberry germplasm (*writ large*) to CBC or to Dr. Shaw's [sic]"). UC criticizes
 14 Nolte's argued failure to consider CBC's allegedly "infringing use of [UC] patented cultivars."
 15 UC Motion at 3:6-7. That criticism is misplaced since CBC does not seek damages from inability
 16 to access UC-patented cultivars.

17 UC also argues that Nolte's opinion is inadmissible because UC's DNA expert opines
 18 that, unbeknownst to CBC, CBC possesses plants derived from 19 of the Plant Types-at-Issue. If
 19 that parentage is proven and CBC is permitted to enjoy progeny from one year of use of 2% of the
 20 population, then it may reduce the damages to a minor extent. However, it would be sheer
 21 speculation for Nolte to assume that unknown availability of 2% of the Plant Types-at-Issue
 22 would have made any significant difference in his calculation. UC cites no evidence or testimony
 23 that: (a) CBC had access to the 100% of the Plant Types-at-Issue; (b) CBC knew of any use of the
 24 Plant Types-at-Issue in the varieties it evaluates; or (c) CBC could have been made whole by
 25 access to 2% of the Plant Types-at-Issue for breeding and no access to any Plant Types-at-Issue
 26 for further development and selection.

27 **2. UC Claims "Nolte Assumes That CBC Will Not Release A Cultivar**
Until 2027." He Does Not.

1 UC mischaracterizes Nolte’s report. Nolte does not assume that CBC will release its first
 2 cultivar in 2027. His calculation and opinion are based on CBC commercializing its first cultivar
 3 in 2019 and its last cultivar in 2026. *See* UC Ex. 1 at p. 3 & Ex. 1; CBC Ex. A at Ex. 5 p. 1.

4 **(a) Nolte’s Opinion Is Based On Eight Missing Cultivars As Supported
 5 By The Relevant Evidence.**

6 Based on the facts and evidence, Nolte calculates damages for eight “missed cultivars.”
 7 The premise of Nolte’s opinion is that, but-for UC misconduct, CBC: (1) would have been able to
 8 enjoy its intellectual property rights with the Plant Types-at-Issue; and (2) would have been able
 9 to patent, commercialize, and generate revenue from an average of one new cultivar per year
 10 beginning with the first patent filing in 2018 and first commercialization in 2019 (the “eight
 11 missed cultivars”). *See* UC Ex. 1 at p. 3 C.3 & C.5, p. 7 IV.6, Ex. 1 (showing commercial
 12 introduction of the first missed cultivar in 2019, the second in 2020, and so on until the
 13 introduction of the eighth missed cultivar in 2026). Unlike UC’s Distler, Nolte cuts off that
 14 projection after eight years of new cultivars, although it would be reasonable to assume that
 15 CBC’s commercialization of its breeding efforts would continue beyond that cutoff. Limiting
 16 damages for only eight new cultivars is far more conservative than UC’s damages expert’s tactic
 17 of seeking damages for all varieties UC might ever make in perpetuity. *See, e.g.*, CBC Distler Ex.
 18 2 at ¶ 34. This one-missed-cultivar-per-year for eight years approach is supported by the
 19 evidence and is abundantly clear from both of Nolte’s reports. CBC Ex. F at 23:4-21; UC Ex. 1
 20 at p. 5 & Ex. 1; CBC Ex. A at Ex. 5 p. 1; *see also* ECF 145-48 at 3; CBC Distler Ex. 9.

21 **(b) Any Assumption That CBC Will Not Suffer Harm For More Than
 22 “3 years” As Claimed By UC’s Expert Is Speculative and Wrong.**

23 Nolte’s opinion assumes that CBC is deprived of Plant Types-at-Issue until UC grants
 24 access for those in which CBC’s intellectual property rights have not been destroyed. So far, the
 25 delay is three years for some varieties, but the delay for at least 400 Transition Cultivars that were
 26 destroyed by UC (despite being the subject of CBC’s claims in this action) is infinite. *See, e.g.*,
 27 CBC Ex. D at 242:1-19. If UC mitigates some of the problem and gives access to CBC, UC
 28 could offset the damages. However, it would be speculative for Nolte to have assumed only a “3
 year delay” as proposed by UC’s expert, which would require UC to give copies of plant

1 materials now. If UC does provide the plant material, then Nolte's calculation provides the basis
 2 for damages for a different time periods as well. *See* CBC Ex. A at p. 7, table 2 (showing
 3 damages if CBC were to miss between four and eight cultivars).⁶

4 UC's argument regarding CBC's hopes for commercial release of a variety from a
 5 separate line of germplasm being developed in connection with its consulting agreement with
 6 International Semillas is irrelevant. In the but-for world (absent UC's misconduct), CBC would
 7 have had the rights to exploit its intellectual property rights in 968 Plant Types-at-Issue. In the
 8 actual world, CBC does not have access to those 968 varieties. There is no evidence of any
 9 capacity constraints that would have prevented CBC from working with two sets of germplasm.
 10 Nor is there any indication that International Semillas could not commercialize its cultivars at the
 11 same time CBC commercialized cultivars from Plant Types-at-Issue. It would have been
 12 speculative for Nolte to assume that CBC could only develop one germplasm collection or the
 13 other. There is no evidence to support that conjecture.

14 **3. Nolte Makes Reasonable And Modest Projections Of Damages Based**
 15 **On The Most Relevant Historical Sales Data.**

16 Nolte appropriately calculates damages for CBC's missed cultivars by looking to the sales
 17 of the Doctors' past cultivars as the best predictors. UC Ex. 1 at p. 3. *See, e.g., January*, 594
 18 Fed. Appx. 907 at 911. Nolte assumes that cultivars will have a 21 year life of generating
 19 royalties based on the term of United States Plant Patents, the additional years of historical
 20 licensing in foreign jurisdictions, and the actual historical data. *See* 35 U.S.C. § 154(a)(2); *see*
 21 UC Ex. 1 at p. 4; CBC Ex. A at p. 4. For those cultivars not yet at the end of their licensing life,
 22 Nolte deduces the remaining sales based on historical patterns on a cultivar-by-cultivar basis and
 23 spreads those remaining sales over the remainder of the life of the cultivar. UC Ex. 1 at p. 6; *see*
 24 also CBC Ex. A at p. 4. Then Nolte calculates the average sales per cultivar for the nine
 25 reference cultivars and uses those average sales to project the missed sales for each of the eight
 26 missed cultivars. UC Ex. 1 at pp. 6-7; CBC Ex. A at Ex. 5 pp. 3-6. Nolte was not required to do

27 ⁶ UC claims that Nolte "agreed that" his alternative calculations were in error. UC Motion
 28 at 5. This is not so. Nolte said he would "give some additional thought to the label" because it
 was "clear from [UC Counsel's] questioning it's causing some confusion." UC Ex. 2 at 38:11-13.

1 any different or more complicated mathematical calculations to estimate those remaining sales.
 2 *See WWP, Inc. v. Wounded Warriors Family Support, Inc.*, 628 F.3d 1032, 1040 (8th Cir. 2011)
 3 (explaining that there is “not … an implicit requirement in Fed.R.Evid. 702 for the proffered
 4 expert to make **complicated** mathematical calculations”) (citations omitted). Nolte explains his
 5 reasonable estimates of the future royalties for the missed cultivars and also performs a
 6 “reasonableness” check by using an “arithmetic average of royalties for whatever actual licensing
 7 period exists for that cultivar.” *See* UC Ex. 1 at p. 7. Nolte conservatively calculates that but for
 8 UC misconduct, CBC would have generated approximately 1.1 billion plant sales over the life of
 9 each missing cultivar. CBC Ex. A at p. 5 & Ex. 5 p. 3.

10 It is true that Nolte could have used the cultivars Distler looks to in her critique of Nolte’s
 11 opinions. Indeed, had he utilized historical sales of Distler’s selected cultivars, the calculation of
 12 CBC’s damages would be substantially higher than those Nolte calculated. *See* CBC Distler Ex.
 13 2 at ¶ 205 & Sch. 17.1. The cultivars Distler selected generated an average of 2.6 billion plant
 14 sales over the life of each cultivar, more than double the 1.1 billion lifetime plant sales that Nolte
 15 calculated. *See* CBC Distler Ex. 2 at Schedule 17.1 (showing the median amount of
 16 1,457,864,792 plant sales over the 20 year life of a cultivar and total sales per cultivar that
 17 average 2.6 billion plant sales per cultivar). That Nolte used a more conservative approach than
 18 Distler, however, strengthens, not weakens his opinion. *See, e.g., Summit 6, LLC*, 802 F.3d at
 19 1296 (explaining that “it is common for parties to choose different, reliable approaches in a single
 20 case and, when they do, the relative strengths and weaknesses of each approach may be exposed
 21 at trial or attacked during cross-examination. That one approach may better account for one
 22 aspect of a royalty estimation does not make other approaches inadmissible.”).

23 **4. Nolte Cannot Include Offsets Of License Fees That Do Not Exist.**

24 UC argues that Nolte should have assumed that CBC would pay UC a license fee for
 25 using the preserved and destroyed Transition Cultivars. No agreement to do so exists, none
 26 would be required, to suppose a fictional one would be speculative, and the royalty negotiations
 27 in the past to avoid this dispute failed and resulted in no agreement. UC cites no authority that
 28 requires an expert to assume such facts that are *not* in the record.

1 Furthermore, UC's attempt to cast Nolte's opinion as "inadmissible" because his opinion
 2 assumes that CBC prevails on its claims is absurd. That assumption is a necessary predicate to
 3 his opinion, which covers CBC's damages if CBC prevails on its claims.

4 **5. Nolte Had Sufficient Time to Review And Did Review and Rely Upon**
The Relevant Facts.

5 As explained in section B above, Nolte reviewed and relied upon facts that are supported
 6 by the evidence. UC focuses on the amount of *time* they *think* he reviewed the facts. Those
 7 criticisms are a mere distraction. Nolte did not testify that he spent two days on the "entire
 8 process" of formulating his opinions. Nolte was able to prepare preliminary calculations based on
 9 information that was publicly available and based on CBC documents (including documents of
 10 Douglas Shaw containing his royalty income) prior to the time he was disclosed to UC. Those
 11 calculations were modified with the additional revenue information from the UC's improperly
 12 designated HCAEO information once clearance was obtained. Regardless, UC cites no authority
 13 that requires an expert to review facts for a requisite amount of time. If UC believes Nolte failed
 14 to consider certain facts, that concern goes to the weight of his testimony, which UC may cross-
 15 examine him about at trial, not the admissibility. *See WWP, Inc.*, 628 F.3d at 1039 (finding that
 16 challenges to an economic expert's failure to consider certain facts "goes to the weight of [the
 17 expert's] testimony rather than admissibility").

18 **C. CONCLUSION**

19 For the foregoing reasons, CBC respectfully requests that this Court deny UC's request to
 20 exclude Nolte's opinions at trial.

21 Dated: April 24, 2017

22 Respectfully submitted,

23 Jones Day

24 By:/s/ Tharan Gregory Lanier
 25 Tharan Gregory Lanier

26 Counsel for Plaintiff and Crossclaim-
 27 Defendant CALIFORNIA BERRY
 28 CULTIVARS, LLC and Cross-Defendants
 DOUGLAS SHAW and KIRK LARSON

1 Tharan Gregory Lanier (SBN 138784)
2 tglanier@jonesday.com
3 Greg L. Lippetz (SBN 154228)
4 glippetz@jonesday.com
5 Nathaniel P. Garrett (SBN 248211)
6 ngarrett@jonesday.com
7 Paul C. Hines (SBN 294428)
8 phines@jonesday.com
9 JONES DAY
10 555 California Street, 26th Floor
11 San Francisco, CA 94104
12 Telephone: +1.415.626.3939
13 Facsimile: +1.415.875.5700
14
15 Sharyl A. Reisman (Admitted *Pro Hac Vice*)
16 sareisman@JonesDay.com
17 JONES DAY
18 250 Vesey Street
19 New York, NY 10281.1047
20 Telephone: +1.212.326.3939
21 Facsimile: +1.212.755.7306
22
23 Attorneys for Plaintiff and Crossclaim
24 Defendant CALIFORNIA BERRY
25 CULTIVARS, LLC and Cross-Defendants
26 DOUGLAS SHAW and KIRK LARSON
27
28

Rick L. McKnight (SBN 55183)
fmcknight@jonesday.com
Alexis Adrian Smith (SBN 274429)
asmith@jonesday.com
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071.2300
Telephone: +1.213.489.3939
Facsimile: +1.213.243.2539

17 CALIFORNIA BERRY CULTIVARS, LLC,

Case No. 3:16-cv-02477-VC

18 Plaintiff,
19 v.
20 THE REGENTS OF THE UNIVERSITY OF
21 CALIFORNIA,
22 Defendant.

**DECLARATION OF ALEXIS A.
SMITH IN SUPPORT OF
CALIFORNIA BERRY CULTIVARS,
LLC, DOUGLAS SHAW, AND KIRK
LARSON'S OPPOSITION TO THE
UNIVERSITY'S MOTION TO
EXCLUDE EXPERT TESTIMONY
BY DAVID NOLTE UNDER FRE 702**

23 THE REGENTS OF THE UNIVERSITY OF
24 CALIFORNIA,

25 Cross-Complainant,

26 v.
27 CALIFORNIA BERRY CULTIVARS, LLC,
28 DOUGLAS SHAW, AND KIRK LARSON,
Cross-Defendants.

1 I, Alexis A. Smith, do hereby declare:

2 1. I am an attorney licensed to practice in the State of California and admitted to
3 practice before this Court. I am an Associate with the law firm of Jones Day, counsel for Plaintiff
4 and Crossclaim-Defendant California Berry Cultivars, LLC (“CBC”), Cross-Defendant Douglas
5 Shaw, and Cross-Defendant Kirk Larson. I have personal knowledge of the facts contained
6 within this declaration and, if called as a witness, would and could testify competently to them. I
7 make this declaration in support of CBC, Dr. Shaw, and Dr. Larson’s Opposition to the
8 University’s Motion to Exclude Testimony by David Nolte Under FRE 702.

9 2. Attached as Exhibit A is a true and correct copy of the supplemental expert report
10 of David Nolte dated March 9, 2017.

11 3. Attached as Exhibit B is a true and correct copy of excerpts of the transcript of the
12 December 9, 2016 deposition of Mary Delany.

13 4. Attached as Exhibit C is a true and correct copy of the University of California,
14 Davis Internal Audit Services, College of Agricultural and Environmental Sciences Plant
15 Breeding Program – Strawberry Breeding, Internal Audit Services Project #14-75, dated
16 December 2014 and produced with beginning Bates number UC_STRAW2_00077123.

17 5. Attached as Exhibit D is a true and correct copy of excerpts of the transcript of the
18 December 16, 2016 deposition of Steven Knapp.

19 6. Attached as Exhibit E is a true and correct copy of an email chain with a last in
20 time email from Mary Delany to AG Kawamura dated March 23, 2015 and produced with
21 beginning Bates number CBC00004796.

22 7. Attached as Exhibit F is a true and correct copy of excerpts of the transcript of the
23 March 14, 2017 deposition of David Nolte.

24 //

25 //

26 //

27 //

28 //

1 Dated: April 24, 2017

2 JONES DAY

3

4 By: /s/ Alexis A. Smith
5 Alexis A. Smith

6 Attorneys for Plaintiff and Crossclaim-
7 Defendant CALIFORNIA BERRY
8 CULTIVARS, LLC, and Cross-Defendants
9 DOUGLAS SHAW and KIRK LARSON

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

REDACTED
VERSION
OF DOCUMENT
SOUGHT TO BE
SEALED



Fulcrum Financial Inquiry LLP
888 S. Figueroa Street, Suite 2000
Los Angeles, CA 90017
(213) 787-4100
www.fulcrum.com

March 9, 2017

Frederick McKnight, Esq.
Jones Day
555 S. Flower Street, 50th Floor
Los Angeles, CA 90071

Dear Mr. McKnight:

This supplemental report is provided in connection with California Berry Cultivars, LLC ("CBC") vs. the Regents of the University of California ("UC") (USDC Case No. 3:16-cv-02477). This report occurs because of the following:

1. On January 21, 2017 Fulcrum issued a report that included (Emphasis in the original):

"A more accurate calculation would consider the actual units shipped to each of these territories, applied to rates that CBC would use for each geography. I intend to perform such a calculation promptly using the same general methodology described below. The more accurate calculation predictably will increase the amount of lost profits, most likely by a significant amount."

2. In a supplemental report dated February 21, 2017, Ms. Carrie Distler included comments regarding CBC's claims for damages (her Section VI, consisting of her paragraphs 180 to 214). Certain of Ms. Distler's comments encourage Fulcrum to perform additional calculations, which are submitted in this supplemental report.

Except for the additions specifically noted herein, Fulcrum's entire January 21, 2017 report remains unchanged. Without limiting the generality of the foregoing, with the possible exception of the additional calculations attached hereto, none of Ms. Distler's comments cause me to modify any of the previously-reported conclusions. Additionally, because this supplemental report is limited to providing and explaining additional calculations, the fact that this supplemental report does not rebut conceptual errors made by Ms. Distler should not be interpreted as agreement with Ms. Distler; stated otherwise, no assumption should be made that I agree with any portion of Ms. Distler's Section VI because I do not include a discussion of why she is wrong.

In order to help avoid duplicate references and any related confusion, all lists and exhibit numbers herein will continue from what was started in Fulcrum's January 21, 2017 report.

I. DESCRIPTION OF ENGAGEMENT (no change)

II. FACTUAL & LEGAL BACKGROUND

CBC additionally provided the following information regarding the rates that CBC would charge, which are used in the additional calculations and conclusions expressed herein. The following rates generally are a 25% rate increase for all three territories:

Jones Day
March 8, 2017
Page 2 of 9

1. \$10.00 per 1,000 plants in California
2. \$11.25 per 1,000 in the U.S. outside of California
3. \$21.00 per 1,000 plants internationally

Because of the use of increased royalty rates, the 25% overall revenue increase used in Fulcrum's January 21, 2017 report is not used herein. Nevertheless, CBC continues to have opportunities for increased revenues that are not part of Fulcrum's calculations herein because of the other factors described in Fulcrum's January 21, 2017 report.

III. INFORMATION RELIED UPON

In addition to those records described in Fulcrum's January 21, 2017 report, Fulcrum relied on the following:

8. Ms. Distler's February 21, 2017 report, including all documents to which Ms. Distler cites
9. Other documents and publicly-available information, as referenced herein

IV. SUMMARY OF FULCRUM'S CONCLUSIONS

As a result of using (i) plant quantities (vs. currency amounts) and (ii) other changes encouraged by Ms. Distler's February 21, 2017 report, the present value of lost profits comparing the but-for and actual worlds is from roughly **\$34.3 million to \$47.9 million**. There are three reasons for these amounts relative to what Fulcrum reported on January 21, 2017, which are described in the following three additional sections.

A. Consideration of Additional Discount Rate Alternatives

In her paragraphs 193 and 194, Ms. Distler criticizes Fulcrum's January 21, 2017 report because:

"... The Nolte Report does not include any analysis supporting this discount rate. Mr. Nolte simply claims (without identifying any support) that this 15% is 'a reasonable discount rate for an established technology-based endeavor...."

Fulcrum's discount rate calculations are based on generally-accepted methods on this subject. Although she misapplies inputs into these calculations and presents only partial calculations, Ms. Distler uses these same methods in her February 21, 2017 supplemental report. Specifically, Ms. Distler presents two dramatically different conclusions regarding discount rates, which (once fixed) can be used to explain why a 15% discount rate is on the high range of what is reasonable. To ensure an agreed starting point to those unfamiliar with discount rates, a decrease in the discount rate will increase damages (because of a lower present value discount). The reverse is also true.

Ms. Distiller's discount rate conclusions are:

1. When Ms. Distler is calculating UC's damages, her claimed discount rate is 7.5%.¹ This 7.5% is calculated using a weighted average cost of capital (usually abbreviated WACC in the field of corporate finance), with approximately 50% attributed to debt and 50% attributed to equity (ownership) capital. Even though Ms. Distler claims that my 15% rate is too low when evaluating a strawberry breeding program, her damage calculation for UC's strawberry breeding

¹ Distler Schedule 2c.2 from Ms. Distler's February 21, 2017 report

Jones Day
 March 8, 2017
 Page 3 of 9

program uses a 7.5% rate. While I do not agree that 7.5% is appropriate to use for either UC or CBC, Ms. Distler's objectivity can and should be called into question when she uses such transparently different conclusions for UC's vs. CBC's damages (see #2 immediately below) involving what she contends are highly similar strawberry breeding programs.

- When Ms. Distler is calculating CBC's damages, her claimed discount rate is 20%.² Inexplicably, unlike UC's WACC, when performing a calculation for CBC, Ms. Distler fails to include any debt (which lowers the WACC). Ms. Distler concludes that CBC's cost of equity (ownership) capital is 20%, nearly twice what she used for this parameter for UC.

Part of Ms. Distler's 20% cost of equity capital is based on an industry adjustment that is based on other publicly-traded companies in the agricultural segment. These companies can be considered in determining the percentage of debt and equity in the WACC. For the agricultural companies that Ms. Distler uses in this calculation, the average weighting is approximately 30% debt and 70% equity.

The determination of individual inputs to the calculation of a discount rate can vary based on different ways of financing an enterprise. Each decision affects other inputs. The most common example involves the use of excessive debt in the capital structure, in which case the cost of equity (ownership) capital increases because the risk of business failure increases. Alternatively, if no debt exists, the cost of equity (ownership) capital decreases because business's financial risks decrease.

Putting aside Ms. Distler's transparent inconsistencies and advocacy, one can use information from Ms. Distler's February 21, 2017 report to confirm the reasonableness of the discount rate that Fulcrum used. The following illustrates that the 15% discount rate used in Fulcrum's January 21, 2017 report is at the high end of the range of reasonableness:

- For purposes of a cost of equity capital, this illustration uses Ms. Distler's 20% cost of equity capital. This is a high starting point that provides a basis for the discount rate actually being lower than what Fulcrum presents herein.
- For purposes of determining the percentage of debt and equity, Ms. Distler's work supports two alternatives, at either 50% or 70% equity, and either 50% or 30% debt. Because two alternatives are considered, the discount rate will be expressed as a range.
- For purposes of the cost of debt, Fulcrum uses the prime rate (currently 3.75%) plus 200 basis points (2%). It is likely that a lower spread than 200 basis points is possible, particularly once the first cultivars have been commercialized, so this debt rate illustration provides a basis for the discount rate being lower than what Fulcrum presents herein.

With these inputs, the discount rate is calculated under two alternatives, as follows:

Table 1: WACC (discount rate) calculation using Ms. Distler's inputs

	50% debt & 50% equity	70% equity & 30% debt
Cost of Equity	20%	Same
Cost of Debt	5.75%	
Tax Rate	40%	
Weighted Average (aka discount rate)	12%	
		15%

² Distler Schedule 2b.1 from Ms. Distler's February 21, 2017 report

Jones Day
 March 8, 2017
 Page 4 of 9

In summary, the 15% discount rate used in Fulcrum's January 21, 2017 is reasonable (if not high, as described above). With a single input change that Ms. Distler uses for UC, a 12% discount rate is the correct result. Fulcrum's discount rate range (i.e., 12% to 15%) is used in the rest of this report.

B. Use of Plant Quantities (vs. currency amounts)

See #1 in the introduction to this supplemental report. Related calculations of these amounts are shown on Exhibit 5 (Exhibits 1 through 4 are used in Fulcrum's January 21, 2017 report). As before, to determine the expected results of the eight missing cultivars, one needs to consider the entire licensing life. The expected results are determined by analyzing nine existing cultivars, and must include projections of royalties for the six cultivars that are not at the end of their licensing life. With the benefit of licensing information for each of the three territories (i.e., California, the United States outside of California, and international), projections were considered for each territory, as described herein.

In making its projections, Fulcrum looked for patterns in the historic plant quantity data. We observed that most cultivars would remain at certain sales levels for between three and seven years, drop by a certain amount, and continue at the sales level for a slightly shorter period, then drop again. Fulcrum's projections used this terraced sale structure. Fulcrum also noted that certain cultivars followed the revenue patterns of other cultivars later in their life. In those cases, Fulcrum's projections sought to follow the trends of other cultivars.

The plant quantity information³ provides data through some part of 2014; the royalty dollar information⁴ provides data through 2016. Fulcrum checked the reasonableness of the 2014, 2015 and 2016 projections by noting that the projected 2014, 2015 and 2016 plant quantities would result in the approximate royalty amounts that UC actually collected. The quantity information in 2014 appears to be incomplete for certain cultivars because the royalties that would have been collected on the quantities listed in 2014 were significantly less than the royalty amounts that UC actually collected. Related calculations are shown in Exhibit 7. In pages 4 through 6 of Exhibit 5, the data that is estimated with the benefit of royalty dollar information is highlighted in red. As shown in Exhibit 7, the overall difference between the plant data in 2014, 2015 and 2016 compared to the currency data in the same years is insignificant.

Importantly, Fulcrum continued to limit projections to no more than 21 years of royalties. International licensing, which may not be limited to the 20-year U.S. patent life, comprises additional licensing revenues. Nevertheless, in order to ensure that the damage calculation is not overstated, the 21-year limitation continues to be used, which has the known effect of understating the total value of international licensing.

As occurred before, as a reasonableness check on the above estimates for six of the existing cultivars, Fulcrum made a second calculation of future expected revenues using an arithmetic average of royalties for whatever actual licensing period exists for that cultivar. The results of this reasonableness check are shown on Exhibit 6, and result in a lifetime royalty estimate of \$20,100,000,⁵ which supports the reasonableness of the first (primary) calculation Fulcrum prepared.

³ UC STRAW2 00058007

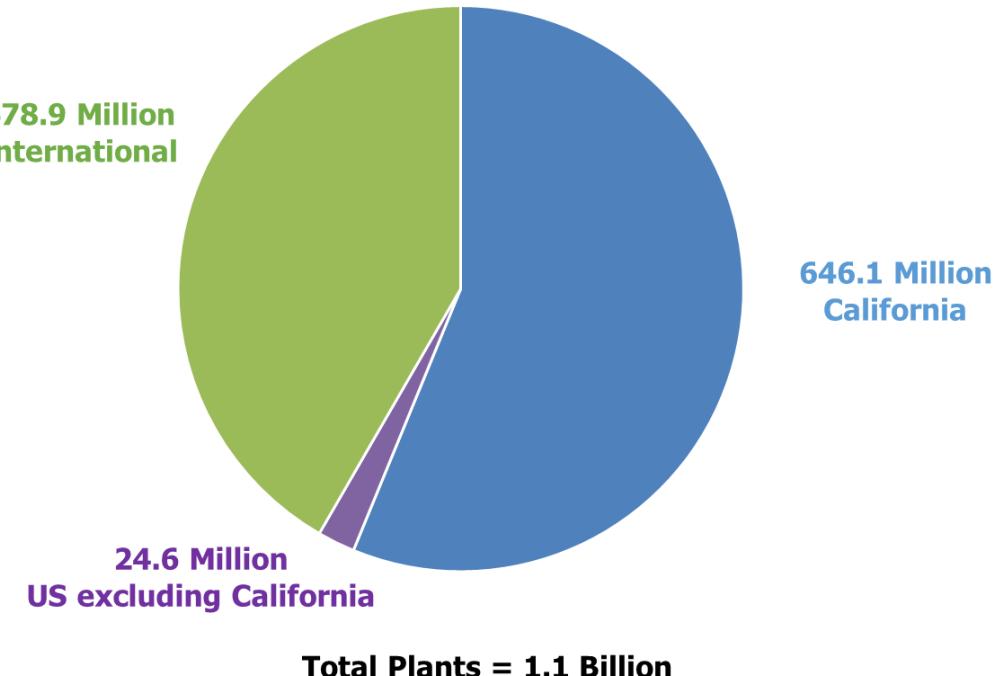
⁴ UC STRAW2 00075844

⁵ Rounded from \$20,099,000. See Exhibit 6 p.2

Jones Day
March 8, 2017
Page 5 of 9

For the nine cultivars used by Fulcrum to estimate the eight missed cultivars, a chart showing the actual and expected results follows:

Average Unit Sales of Cultivars Used in Model

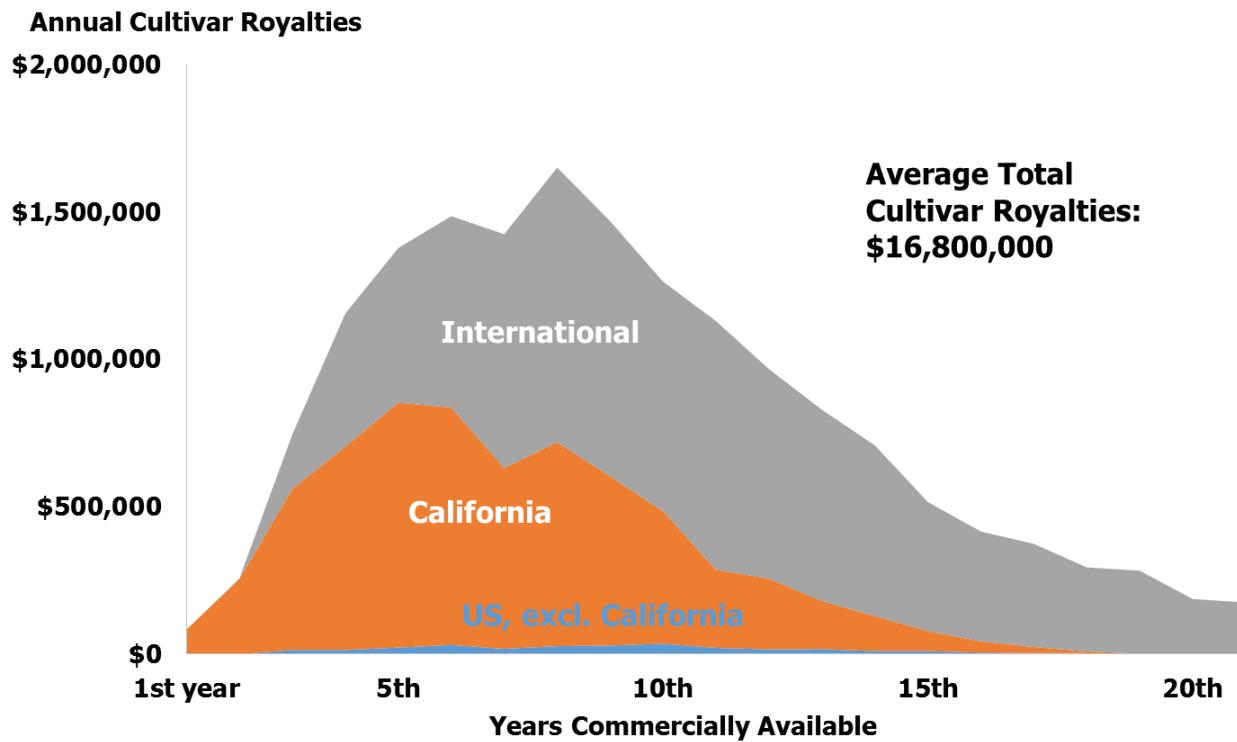


Source: UC STRAW2 00058007

When priced based on CBC's royalty rates, the source and timing of CBC's expected average royalties for each of the eight missed cultivars is charted as follows:

Jones Day
 March 8, 2017
 Page 6 of 9

CBC's average expected royalties for each new cultivar average \$16.8 million



Source: UC STRAW2 00058007

Using the same methodology described in Fulcrum's January 21, 2017 report, Fulcrum's revised calculations show:

1. The average cultivar generates \$16,800,000⁶ for CBC in lifetime royalties.
2. Over the eight years that CBC will miss cultivars because of UC's conduct, CBC will miss \$134,400,000 of royalties (calculated as eight cultivars, at an average of \$16,800,000 for each cultivar).
3. Using a 15% discount rate, the damages resulting from the discounting of eight years of missed cultivars is \$34,300,000.⁷ Using a 12% discount rate, the damages resulting from the discounting of eight years of missed cultivars is \$47,900,000.⁸
4. The present value discount is the difference between the cash flows that would have eventually been received, and the amount of damages that are calculated based on their present value.

⁶ Rounded from \$16,794,000. See Exhibit 5 p. 3

⁷ Rounded from \$34,258,357. See Exhibit 5 p. 1

⁸ Rounded from \$47,947,397. See Exhibit 5 p. 2

Jones Day
 March 8, 2017
 Page 7 of 9

- a. Using 15%, the difference between the \$134,400,000 of undiscounted royalties, and the \$34,300,000 of damages presented herein, is \$100,100,000. The total discount is 75 percent.⁹
- b. Using 12%, the difference between the \$134,400,000 of undiscounted royalties, and the \$47,900,000 of damages presented herein, or \$86,400,000. The total discount is 64 percent.¹⁰

C. Consideration of Different Periods Needed before Cultivars can be Commercialized

Based on input from CBC, Fulcrum initially used eight years as the period needed to develop a cultivar that was ready for commercialization. Ms. Distler criticizes the use of this eight-year parameter, and advocates a three-year damages period. Given that (i) CBC has been denied access to plant materials since Drs. Shaw and Larson left UC's employ in November 2014 and (ii) no cultivar has been released or is expected to be released by CBC in 2017, the three-year period Ms. Distler advocates is too short. Nevertheless, if CBC's scientific endeavors are particularly successful, and/or UC decides post-trial that it wishes to cooperate with CBC, perhaps a shorter period could be applicable. For this reason, Fulcrum considered alternatives other than the eight-year development period discussed in Fulcrum's January 21, 2017 report.

If a shorter development period is applicable, two offsetting changes occur. Specifically:

1. The number of cultivars for which damages are calculated decreases - In isolation, a decrease in the number of lost cultivars decreases the damage amount.
2. The period of time occurring before cultivars are available for commercial exploitation decreases - In isolation, a decrease in the time occurring before cultivars are available for commercial exploitation increases the damage amount because there is a smaller present value discount.

The net offsetting effect causes damages to change less than what one might expect when additional years of development occur. By using the eight years contained in Fulcrum's January 21, 2017 report (and the 15% discount rate), damages were actually smaller than what could have occurred using other parameters. Damages using alternative assumptions are calculated in Exhibit 8, and are summarized below:

Table 2: Summary of Damages using Different Discount Rate and Time Inputs

First Commercial Cultivar (# Years)	Damages Using Discount Rate		Calculation Source
	15%	12%	
2015 (4 years)	\$31.3 million	\$37.6 million	Exhibit 8 pp. 1, 5
2016 (5 years)	33.6 million	42.0 million	Exhibit 8 pp. 2, 6
2017 (6 years)	34.7 million	45.0 million	Exhibit 8 pp. 3, 7
2018 (7 years)	34.8 million	46.9 million	Exhibit 8 pp. 4, 8
2019 (8 years)	34.3 million	47.9 million	Exhibit 5 pp. 1, 2

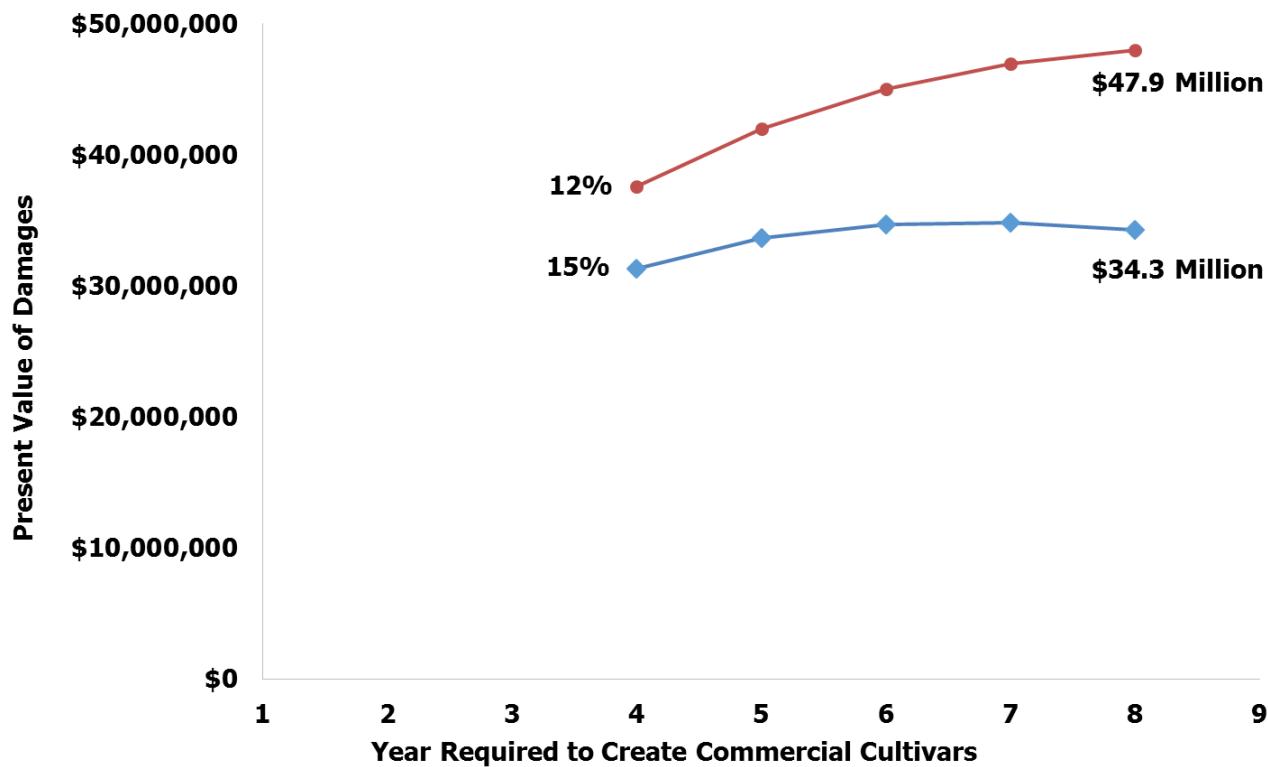
A graph showing the preceding table follows:

⁹ See Exhibit 5 p. 1

¹⁰ See Exhibit 5 p. 2

Jones Day
 March 8, 2017
 Page 8 of 9

Range of CBC's Damages



The following table additionally shows the results of calculations for the 7.5% and 20% discount rates that Ms. Distler concludes is appropriate for CBC and UC, respectively:

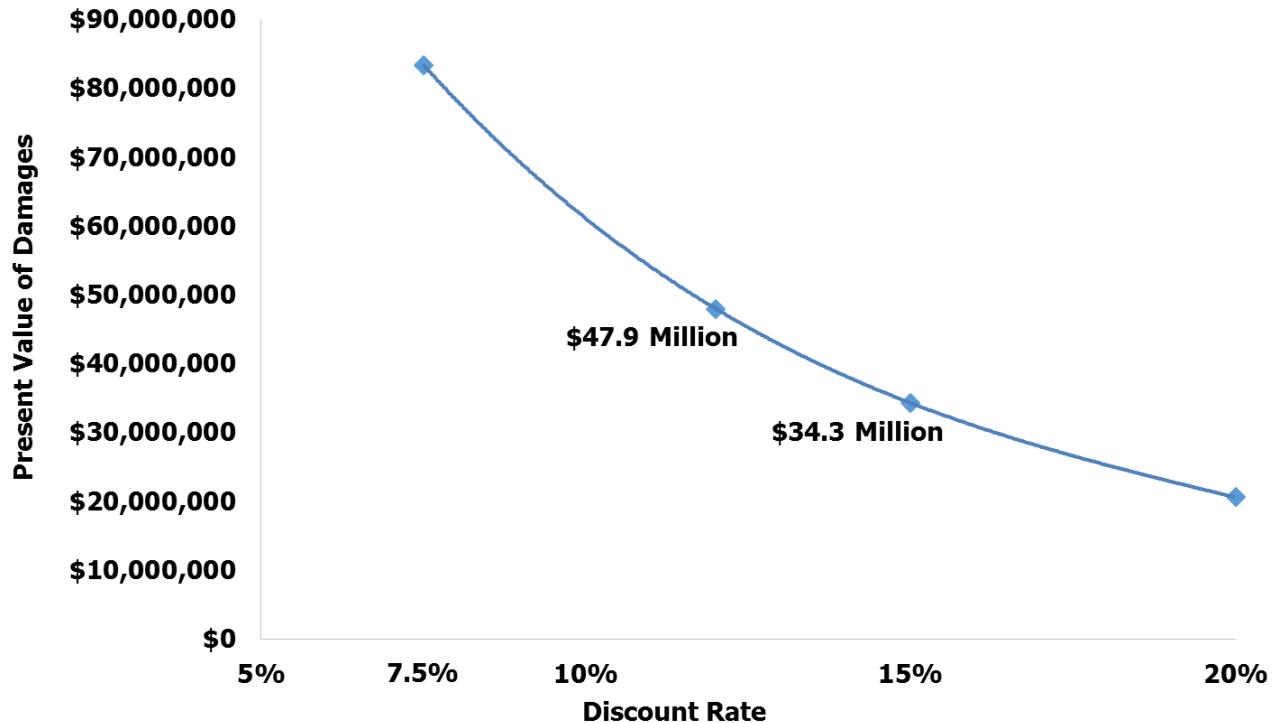
Table 3: Changes in damages using alternative discount rates

Discount Rate	Damages	Calculation Source
7.5%	\$ 83.4 million	Exhibit 8 p. 9
12%	47.9 million	Exhibit 5 p. 1
15%	34.3 million	Exhibit 5 p. 2
20%	20.6 million	Exhibit 8 p. 10

Discount rates have a dramatic impact on the calculation results, particularly when the extreme rates advocated by Ms. Distler are used. A graph showing the effect of discount rate on the damage amounts follows. The following graph illustrates the impact on the eight-year development period scenario, although a similar result would be seen using the other development period scenarios.

Jones Day
March 8, 2017
Page 9 of 9

Using a Range of Reasonable Discount Rates, Damages are in the Range of \$34.3 to \$47.9 Million



Source: Assumes an 8 Year Delay

V. OTHER REQUIRED INFORMATION (see the January 21, 2017 report)

Very truly yours,
Fulcrum Financial Inquiry LLP

By: 
David Nolte

California Berry Cultivars vs. University of California**Exhibit 5: Lost Revenue Model**

Trend Analysis Projections

Net Net Discount Rate 11% [2]
 Years of Delay 8 Years

Year	Discounted	PV Factor	[1]	Years								C	D = sum B:C	E = A * D
				A		B		C		D				
				Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Cultivar#8	Subtotal	Present Value	
2019	2.5	0.77	\$ 83,000									\$ 83,000	\$ 63,940	
2020	3.5	0.69	\$ 257,000	\$ 83,000								340,000	235,965	
2021	4.5	0.63	\$ 746,000	\$ 257,000	\$ 83,000							1,086,000	679,010	
2022	5.5	0.56	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000						2,242,000	1,262,872	
2023	6.5	0.51	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000					3,620,000	1,837,000	
2024	7.5	0.46	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000				5,106,000	2,334,310	
2025	8.5	0.41	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000			6,531,000	2,689,889	
2026	9.5	0.37	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000		8,182,000	3,035,926	
2027	10.5	0.33	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000		9,568,000	3,198,379	
2028	11.5	0.30	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000		10,575,000	3,184,682	
2029	12.5	0.27	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000		10,959,000	2,973,266	
2030	13.5	0.24	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000		10,770,000	2,632,422	
2031	14.5	0.22	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000		10,221,000	2,250,662	
2032	15.5	0.20	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000		9,443,000	1,873,285	
2033	16.5	0.18	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000		8,534,000	1,525,188	
2034	17.5	0.16	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000		7,299,000	1,175,199	
2035	18.5	0.15	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000		6,204,000	899,905	
2036	19.5	0.13	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000		5,234,000	683,968	
2037	20.5	0.12	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000		4,387,000	516,472	
2038	21.5	0.11	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000		3,607,000	382,562	
2039	22.5	0.10	\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000		2,953,000	282,161	
2040	23.5	0.09		\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000		2,245,000	193,253	
2041	24.5	0.08			\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000		1,729,000	134,086	
2042	25.5	0.07				\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000		1,313,000	91,734	
2043	26.5	0.06					\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000		939,000	59,103	
2044	27.5	0.06						\$ 175,000	\$ 187,000	\$ 283,000		645,000	36,574	
2045	28.5	0.05							\$ 175,000	\$ 187,000		362,000	18,493	
2046	29.5	0.05								\$ 175,000		175,000	8,054	
Notes:												\$ 134,352,000	\$ 34,258,357	
[1] Uses mid-year convention														75%
[2] 15% discount rate less assumed 4% long-term growth rate														

California Berry Cultivars vs. University of California**Exhibit 5: Lost Revenue Model**

Trend Analysis Projections

Net Net Discount Rate 8% [2]
 Years of Delay 8 Years

Year	Discounted	PV Factor	[1]	Years								C	D = sum B:C	E = A * D
				A		B		C		D				
				Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Cultivar#8	Subtotal	Present Value	
2019	2.5	0.82	\$ 83,000									\$ 83,000	\$ 68,473	
2020	3.5	0.76	257,000	\$ 83,000								340,000	259,714	
2021	4.5	0.71	746,000	257,000	\$ 83,000							1,086,000	768,109	
2022	5.5	0.65	1,156,000	746,000	257,000	\$ 83,000						2,242,000	1,468,267	
2023	6.5	0.61	1,378,000	1,156,000	746,000	257,000	\$ 83,000					3,620,000	2,195,099	
2024	7.5	0.56	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000				5,106,000	2,866,835	
2025	8.5	0.52	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			6,531,000	3,395,297	
2026	9.5	0.48	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		8,182,000	3,938,527	
2027	10.5	0.45	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000		9,568,000	4,264,535	
2028	11.5	0.41	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000		10,575,000	4,364,226	
2029	12.5	0.38	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000		10,959,000	4,187,685	
2030	13.5	0.35	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000		10,770,000	3,810,614	
2031	14.5	0.33	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000		10,221,000	3,348,489	
2032	15.5	0.30	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000		9,443,000	2,864,454	
2033	16.5	0.28	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000		8,534,000	2,396,959	
2034	17.5	0.26	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000		7,299,000	1,898,225	
2035	18.5	0.24	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000		6,204,000	1,493,937	
2036	19.5	0.22	294,000	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000		5,234,000	1,166,999	
2037	20.5	0.21	283,000	294,000	374,000	416,000	516,000	708,000	829,000	967,000		4,387,000	905,692	
2038	21.5	0.19	187,000	283,000	294,000	374,000	416,000	516,000	708,000	829,000		3,607,000	689,502	
2039	22.5	0.18	175,000	187,000	283,000	294,000	374,000	416,000	516,000	708,000		2,953,000	522,672	
2040	23.5	0.16		175,000	187,000	283,000	294,000	374,000	416,000	516,000		2,245,000	367,924	
2041	24.5	0.15			175,000	187,000	283,000	294,000	374,000	416,000		1,729,000	262,369	
2042	25.5	0.14				175,000	187,000	283,000	294,000	374,000		1,313,000	184,484	
2043	26.5	0.13					175,000	187,000	283,000	294,000		939,000	122,162	
2044	27.5	0.12						175,000	187,000	283,000		645,000	77,697	
2045	28.5	0.11							175,000	187,000		362,000	40,377	
2046	29.5	0.10								175,000		175,000	18,073	

Notes:

[1] Uses mid-year convention

[2] 12% discount rate less assumed 4% long-term growth rate

\$ 134,352,000 \$ 47,947,397

64%

California Berry Cultivars vs. University of California**Exhibit 5: Lifetime Royalty Calculation**

Trend Analysis

	<i>A</i>		<i>B</i>		<i>C = A * B</i>			
			Royalties (\$/1000)		Expected Royalties			
	Average Units							
California	646,103,605	\$ 10.00	\$ 6,461,036					
United States	24,638,518	11.25	277,183					
International	478,916,148	21.00	10,057,239					
	<u>1,149,658,271</u>		\$ 16,795,458					
	<i>D</i>	<i>E = C * D</i>	<i>F</i>	<i>G = C * F</i>	<i>H</i>	<i>I = C * H</i>	<i>J = E + G + I</i>	
	California		United States		International			
	%	Expected Royalties	%	Expected Royalties	%	Expected Royalties	Total Royalties	
1st year	1%	\$ 83,000	0%	\$ -	0%	\$ -	\$ 83,000	
	4%	255,000	0%	-	0%	2,000	257,000	
	8%	547,000	5%	14,000	2%	185,000	746,000	
	11%	690,000	5%	14,000	4%	452,000	1,156,000	
5th	13%	831,000	8%	22,000	5%	525,000	1,378,000	
	12%	806,000	11%	31,000	6%	649,000	1,486,000	
	9%	613,000	7%	18,000	8%	794,000	1,425,000	
	11%	692,000	10%	27,000	9%	932,000	1,651,000	
10th	9%	574,000	11%	29,000	9%	866,000	1,469,000	
	7%	450,000	13%	35,000	8%	779,000	1,264,000	
	4%	265,000	8%	21,000	8%	844,000	1,130,000	
	4%	240,000	6%	16,000	7%	711,000	967,000	
	3%	163,000	6%	17,000	6%	649,000	829,000	
	2%	119,000	4%	10,000	6%	579,000	708,000	
15th	1%	68,000	3%	10,000	4%	438,000	516,000	
	1%	38,000	2%	5,000	4%	373,000	416,000	
	0%	20,000	1%	4,000	3%	350,000	374,000	
	0%	6,000	1%	3,000	3%	285,000	294,000	
	0%	-	0%	1,000	3%	282,000	283,000	
20th	0%	-	0%	-	2%	187,000	187,000	
	0%	-	0%	-	2%	175,000	175,000	
(rounded)	100%	\$ 6,460,000	100%	\$ 277,000	100%	\$ 10,057,000	\$ 16,794,000	
							(rounded)	

California Berry Cultivars vs. University of California**Exhibit 5: Strawberry Cultivar Unit Sales Analysis**

Trend Projections - California

Average Unit Sales **646,103,605**

Camino Real (2001-125)	Ventana (2001-126)	Albion (2004-323)	Palomar (2007-274)	Monterey (2008-332)	San Andreas (2008-333)	Portola (2008-334)	Benicia (2010-492)	Mojave (2010-493)	TOTALS
---------------------------	-----------------------	----------------------	-----------------------	------------------------	---------------------------	-----------------------	-----------------------	----------------------	--------

00%

Notes:

[1] The source data for 2014 is apparently incomplete; 2014 units do not approach the 2014 royalties recorded.
 [2] Unit data is lacking; however, total royalties are not. Unit projections are made to tie to actual royalties.

Source: UC_STRAW2_00058007

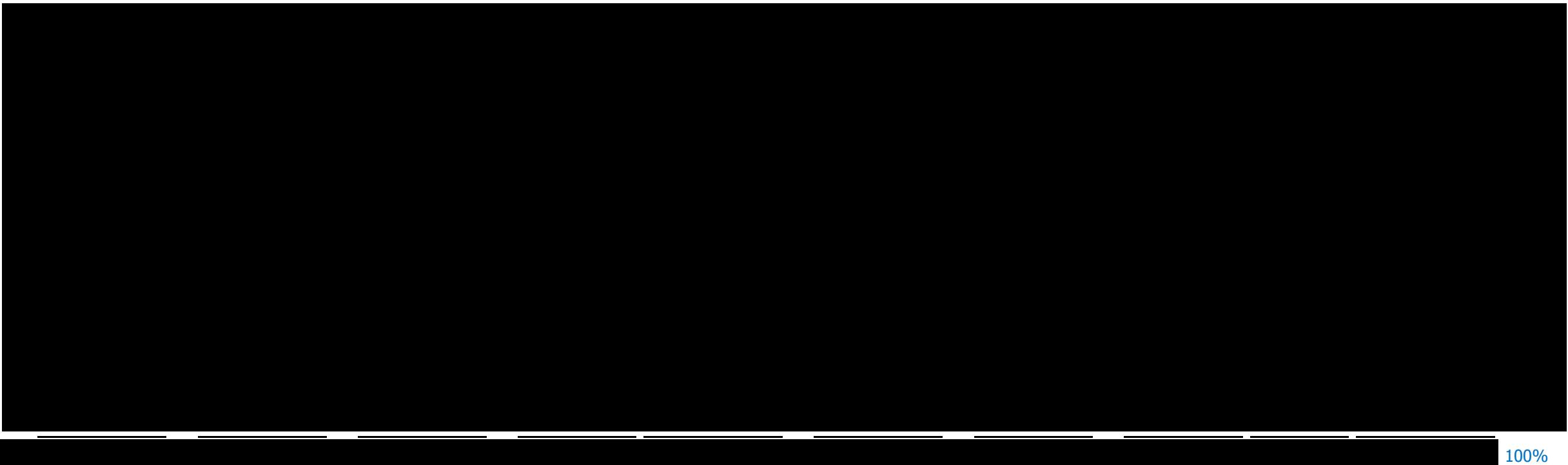
CONTAINS ATTORNEYS EYES ONLY INFORMATION

California Berry Cultivars vs. University of California**Exhibit 5: Strawberry Cultivar Unit Sales Analysis**

Trend Projections - United States

Average Unit Sales 24,638,518

Camino Real (2001-125)	Ventana (2001-126)	Albion (2004-323)	Palomar (2007-274)	Monterey (2008-332)	San Andreas (2008-333)	Portola (2008-334)	Benicia (2010-492)	Mojave (2010-493)	TOTALS
---------------------------	-----------------------	----------------------	-----------------------	------------------------	---------------------------	-----------------------	-----------------------	----------------------	--------



Notes:

[1] The source data for 2014 is apparently incomplete; 2014 units do not approach the 2014 royalties recorded.
 [2] Unit data is lacking; however, total royalties are not. Unit projections are made to tie to actual royalties.

Source: UC_STRAW2_00058007

CONTAINS ATTORNEYS EYES ONLY INFORMATION

California Berry Cultivars vs. University of California
Exhibit 5: Strawberry Cultivar Unit Sales Analysis

Trend Projections - International

Average Unit Sales **478,916,148**

Camino Real (2001-125)	Ventana (2001-126)	Albion (2004-323)	Palomar (2007-274)	Monterey (2008-332)	San Andreas (2008-333)	Portola (2008-334)	Benicia (2010-492)	Mojave (2010-493)	TOTALS
---------------------------	-----------------------	----------------------	-----------------------	------------------------	---------------------------	-----------------------	-----------------------	----------------------	--------

00%

Notes:

- [1] The source data for 2014 is apparently incomplete; 2014 units do not approach the 2014 royalties recorded.
- [2] Unit data is lacking; however, total royalties are not. Unit projections are made to tie to actual royalties.

Source: UC_STRAW2_00058007

CONTAINS ATTORNEYS EYES ONLY INFORMATION

California Berry Cultivars vs. University of California**Exhibit 6: Lost Revenue Model**

Cultivar Average Projections

Net Net Discount Rate 11% [2]																													
			A		B																								
Years			Year	Discounted	PV Factor	[1]	Cultivar#1		Cultivar#2		Cultivar#3		Cultivar#4		Cultivar#5		Cultivar#6		Cultivar#7		Cultivar#8		Subtotal		Present Value				
							\$	83,000	\$	83,000	\$	83,000	\$	83,000	\$	83,000	\$	83,000	\$	83,000	\$	83,000	\$	63,940	\$	235,965			
2019	2.5	0.77	\$	83,000																				\$	83,000	\$	63,940		
2020	3.5	0.69	\$	257,000	\$	83,000																			\$	340,000	\$	235,965	
2021	4.5	0.63	\$	746,000	\$	257,000	\$	83,000																		\$	1,086,000	\$	679,010
2022	5.5	0.56	\$	1,156,000	\$	746,000	\$	257,000	\$	83,000															\$	2,242,000	\$	1,262,872	
2023	6.5	0.51	\$	1,378,000	\$	1,156,000	\$	746,000	\$	257,000	\$	83,000													\$	3,620,000	\$	1,837,000	
2024	7.5	0.46	\$	1,486,000	\$	1,378,000	\$	1,156,000	\$	746,000	\$	257,000	\$	83,000											\$	5,106,000	\$	2,334,310	
2025	8.5	0.41	\$	1,148,000	\$	1,486,000	\$	1,378,000	\$	1,156,000	\$	746,000	\$	257,000	\$	83,000								\$	6,254,000	\$	2,575,802		
2026	9.5	0.37	\$	1,347,000	\$	1,148,000	\$	1,486,000	\$	1,378,000	\$	1,156,000	\$	746,000	\$	257,000	\$	83,000						\$	7,601,000	\$	2,820,346		
2027	10.5	0.33	\$	1,174,000	\$	1,347,000	\$	1,148,000	\$	1,486,000	\$	1,378,000	\$	1,156,000	\$	746,000	\$	257,000						\$	8,692,000	\$	2,905,551		
2028	11.5	0.30	\$	1,034,000	\$	1,174,000	\$	1,347,000	\$	1,148,000	\$	1,486,000	\$	1,378,000	\$	1,156,000	\$	746,000	\$	257,000					\$	9,469,000	\$	2,851,608	
2029	12.5	0.27	\$	940,000	\$	1,034,000	\$	1,174,000	\$	1,347,000	\$	1,148,000	\$	1,486,000	\$	1,378,000	\$	1,156,000	\$	746,000	\$	257,000			\$	9,663,000	\$	2,621,650	
2030	13.5	0.24	\$	941,000	\$	940,000	\$	1,034,000	\$	1,174,000	\$	1,347,000	\$	1,148,000	\$	1,486,000	\$	1,378,000	\$	1,156,000	\$	746,000	\$	2,309,296					
2031	14.5	0.22	\$	923,000	\$	941,000	\$	940,000	\$	1,034,000	\$	1,174,000	\$	1,347,000	\$	1,148,000	\$	1,486,000	\$	1,378,000	\$	1,156,000	\$	8,993,000	\$	1,980,256			
2032	15.5	0.20	\$	871,000	\$	923,000	\$	941,000	\$	940,000	\$	1,034,000	\$	1,174,000	\$	1,347,000	\$	1,148,000	\$	1,486,000	\$	1,378,000	\$	8,378,000	\$	1,662,012			
2033	16.5	0.18	\$	945,000	\$	871,000	\$	923,000	\$	941,000	\$	940,000	\$	1,034,000	\$	1,174,000	\$	1,347,000	\$	1,148,000	\$	1,486,000	\$	8,175,000	\$	1,461,028			
2034	17.5	0.16	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	941,000	\$	940,000	\$	1,034,000	\$	1,174,000	\$	1,347,000	\$	1,148,000	\$	7,773,000	\$	1,251,516			
2035	18.5	0.15	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	941,000	\$	940,000	\$	1,034,000	\$	1,174,000	\$	1,347,000	\$	7,544,000	\$	1,094,275			
2036	19.5	0.13	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	941,000	\$	940,000	\$	1,034,000	\$	1,174,000	\$	7,455,000	\$	974,203			
2037	20.5	0.12	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	941,000	\$	940,000	\$	1,034,000	\$	7,460,000	\$	878,249			
2038	21.5	0.11	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	7,464,000	\$	791,640			
2039	22.5	0.10	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	7,486,000	\$	715,291			
2040	23.5	0.09	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	6,615,000	\$	569,429			
2041	24.5	0.08	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	5,670,000	\$	439,714			
2042	25.5	0.07	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	4,725,000	\$	330,115			
2043	26.5	0.06	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	3,780,000	\$	237,921			
2044	27.5	0.06	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	2,835,000	\$	160,757			
2045	28.5	0.05	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	1,890,000	\$	96,551			
2046	29.5	0.05	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	945,000	\$	871,000	\$	923,000	\$	940,000	\$	945,000	\$	43,491			

\$ 160,792,000 \$ 35,183,802

78%

Notes:

[1] Uses mid-year convention

[2] 15% discount rate less assumed 4% long-term growth rate

California Berry Cultivars vs. University of California**Exhibit 6: Lifetime Royalty Calculation**

Cultivar Average

	<i>A</i>		<i>B</i>		<i>C = A * B</i>		<i>H</i>	<i>I = C * H</i>	<i>J = E + G + I</i>
	Average Units	Royalties (\$/1000)			Expected Royalties				
California	1,015,800,632	\$ 10.00			\$ 10,158,006				
United States	29,471,991	11.25			331,560				
International	457,812,422	21.00			9,614,061				
	<u>1,503,085,045</u>				<u>\$ 20,103,627</u>				
	<i>D</i>	<i>E = C * D</i>	<i>F</i>	<i>G = C * F</i>	<i>H</i>	<i>I = C * H</i>			
	California		United States		International				
	%	Expected Royalties	%	Expected Royalties	%	Expected Royalties			
1st year	1%	\$ 83,000	0%	\$ -	0%	\$ -			\$ 83,000
	3%	255,000	0%	-	0%	2,000			257,000
	5%	547,000	4%	14,000	2%	185,000			746,000
	7%	690,000	4%	14,000	5%	452,000			1,156,000
5th	8%	831,000	7%	22,000	5%	525,000			1,378,000
	8%	806,000	9%	31,000	7%	649,000			1,486,000
	6%	560,000	5%	16,000	6%	572,000			1,148,000
	6%	654,000	7%	22,000	7%	671,000			1,347,000
10th	5%	525,000	7%	23,000	7%	626,000			1,174,000
	4%	407,000	9%	29,000	6%	598,000			1,034,000
	2%	250,000	5%	16,000	7%	674,000			940,000
	4%	422,000	4%	13,000	5%	506,000			941,000
	4%	407,000	5%	15,000	5%	501,000			923,000
	4%	387,000	3%	10,000	5%	474,000			871,000
15th	5%	476,000	5%	15,000	5%	454,000			945,000
	5%	476,000	5%	15,000	5%	454,000			945,000
	5%	476,000	5%	15,000	5%	454,000			945,000
	5%	476,000	5%	15,000	5%	454,000			945,000
20th	5%	476,000	5%	15,000	5%	454,000			945,000
	5%	476,000	5%	15,000	5%	454,000			945,000
	5%	476,000	5%	15,000	5%	454,000			945,000
(rounded)	100%	\$ 10,156,000	100%	\$ 330,000	100%	\$ 9,613,000			\$ 20,099,000
									(rounded)

California Berry Cultivars vs. University of California

Exhibit 6: Strawberry Cultivar Unit Sales Analysis

Cultivar Average Projections - California

Average Unit Sales	1,015,800,632								
Camino Real (2001-125)	Ventana (2001-126)	Albion (2004-323)	Palomar (2007-274)	Monterey (2008-332)	San Andreas (2008-333)	Portola (2008-334)	Benicia (2010-492)	Mojave (2010-493)	TOTALS

100%

Source: UC_STRAW2_00058007

CONTAINS ATTORNEYS EYES ONLY INFORMATION

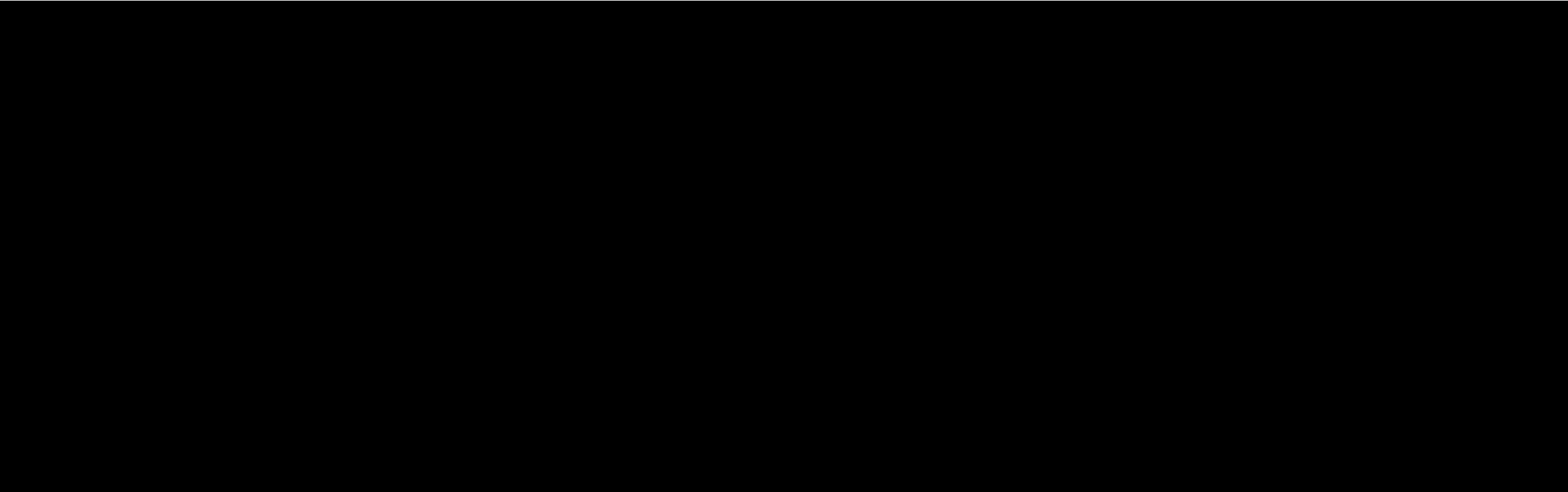
California Berry Cultivars vs. University of California

Exhibit 6: Strawberry Cultivar Unit Sales Analysis

Cultivar Average Projections - United States

Average Unit Sales **29,471,991**

Camino Real	Ventana	Albion	Palomar	Monterey	San Andreas	Portola	Benicia	Mojave
-------------	---------	--------	---------	----------	-------------	---------	---------	--------



100%

Source: UC_STRAW2_00058007

CONTAINS ATTORNEYS EYES ONLY INFORMATION

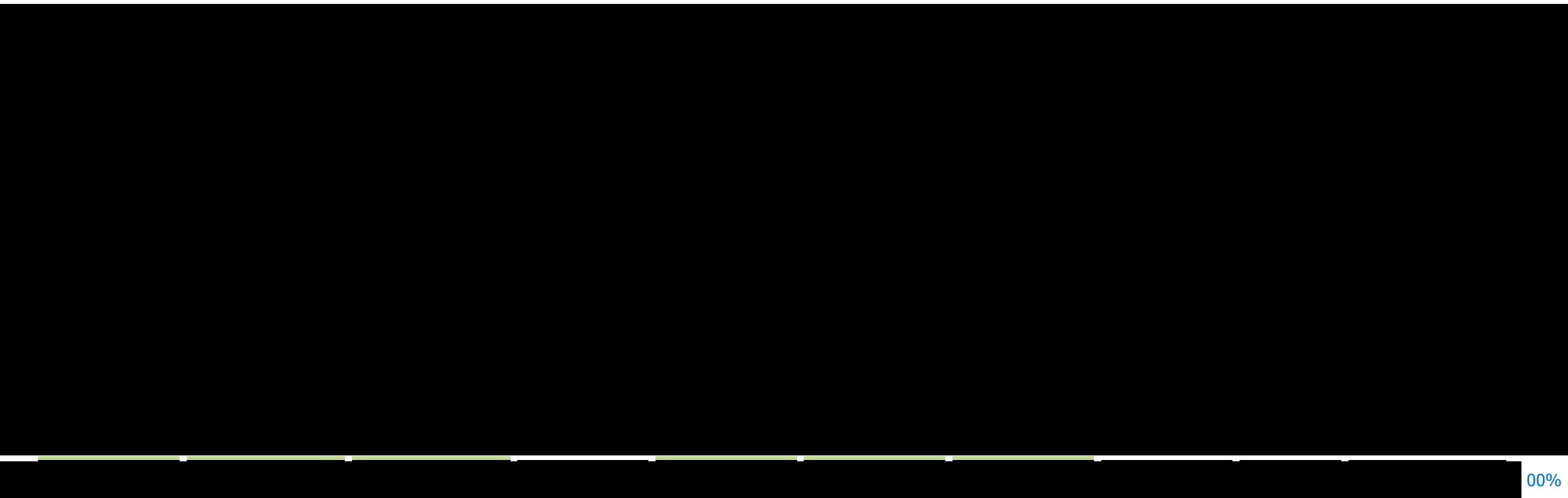
California Berry Cultivars vs. University of California

Exhibit 6: Strawberry Cultivar Unit Sales Analysis

Cultivar Average Projections - International

Average Unit Sales **457,812,422**

Camino Real	Ventana	Albion	Palomar	Monterey	San Andreas	Portola	Benicia	Mojave
-------------	---------	--------	---------	----------	-------------	---------	---------	--------

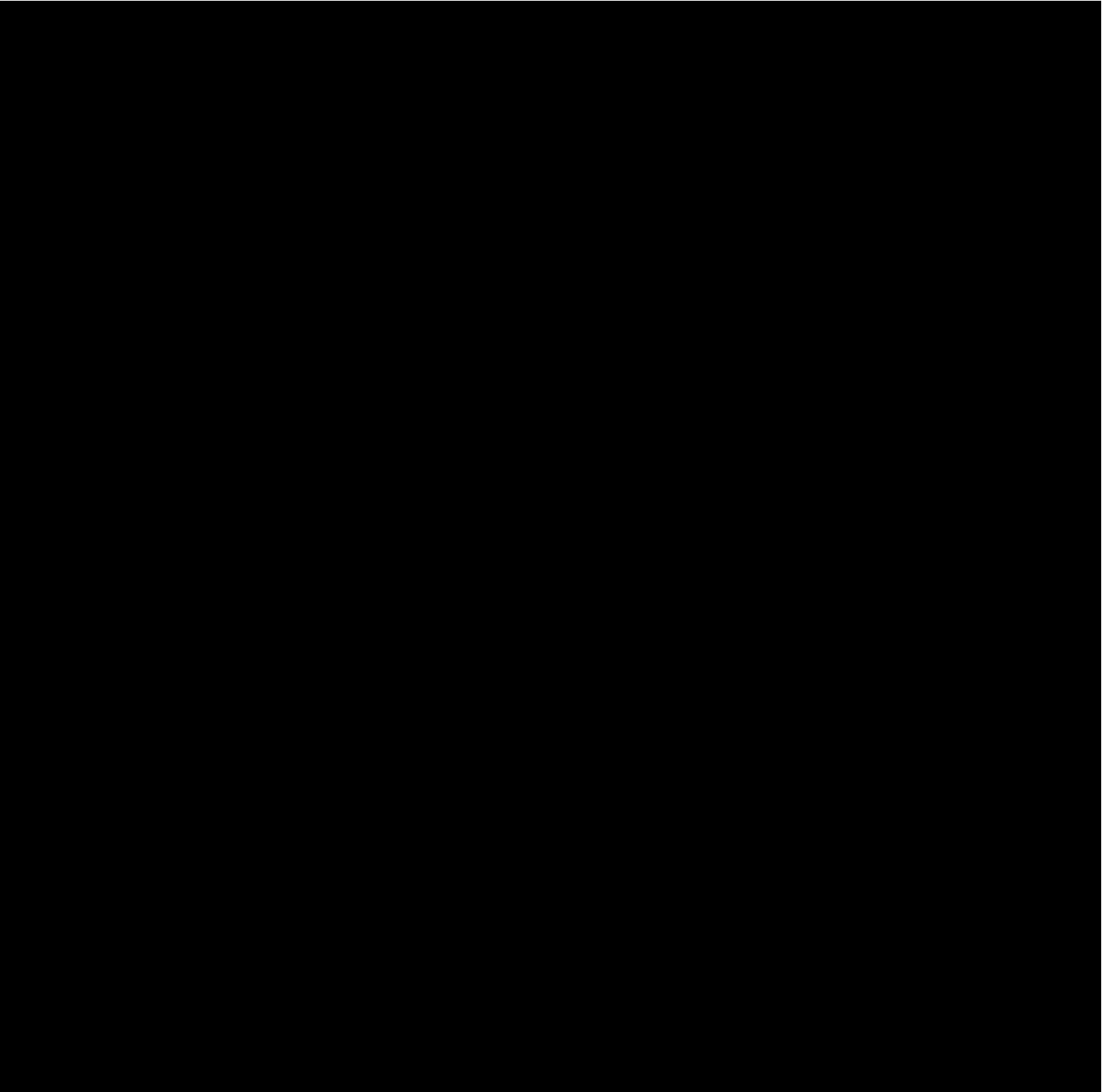


Source: UC_STRAW2_00058007

CONTAINS ATTORNEYS EYES ONLY INFORMATION

California Berry Cultivars vs. University of California
Exhibit 7: Projections versus Actual Royalties
2014 - 2016

A



California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 11% [2]
 Years of Delay 4 Years

Year	Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	C		D = sum B:C		E = A * D	
							Years	A	B	Subtotal	Present Value	
2015	0	1	\$ 83,000						\$ 83,000	\$ 83,000		
2016	0	1	257,000	\$ 83,000					340,000	340,000		
2017	0.5	0.95	746,000	257,000	\$ 83,000				1,086,000	1,030,786		
2018	1.5	0.86	1,156,000	746,000	257,000	\$ 83,000			2,242,000	1,917,128		
2019	2.5	0.77	1,378,000	1,156,000	746,000	257,000			3,537,000	2,724,756		
2020	3.5	0.69	1,486,000	1,378,000	1,156,000	746,000			4,766,000	3,307,681		
2021	4.5	0.63	1,425,000	1,486,000	1,378,000	1,156,000			5,445,000	3,404,431		
2022	5.5	0.56	1,651,000	1,425,000	1,486,000	1,378,000			5,940,000	3,345,878		
2023	6.5	0.51	1,469,000	1,651,000	1,425,000	1,486,000			6,031,000	3,060,483		
2024	7.5	0.46	1,264,000	1,469,000	1,651,000	1,425,000			5,809,000	2,655,700		
2025	8.5	0.41	1,130,000	1,264,000	1,469,000	1,651,000			5,514,000	2,271,023		
2026	9.5	0.37	967,000	1,130,000	1,264,000	1,469,000			4,830,000	1,792,168		
2027	10.5	0.33	829,000	967,000	1,130,000	1,264,000			4,190,000	1,400,628		
2028	11.5	0.30	708,000	829,000	967,000	1,130,000			3,634,000	1,094,386		
2029	12.5	0.27	516,000	708,000	829,000	967,000			3,020,000	819,350		
2030	13.5	0.24	416,000	516,000	708,000	829,000			2,469,000	603,477		
2031	14.5	0.22	374,000	416,000	516,000	708,000			2,014,000	443,482		
2032	15.5	0.20	294,000	374,000	416,000	516,000			1,600,000	317,405		
2033	16.5	0.18	283,000	294,000	374,000	416,000			1,367,000	244,309		
2034	17.5	0.16	187,000	283,000	294,000	374,000			1,138,000	183,227		
2035	18.5	0.15	175,000	187,000	283,000	294,000			939,000	136,204		
2036	19.5	0.13		175,000	187,000	283,000			645,000	84,287		
2037	20.5	0.12			175,000	187,000			362,000	42,617		
2038	21.5	0.11				175,000			175,000	18,561		
Notes:									\$ 67,176,000	\$ 31,320,968		
[1] Uses mid-year convention												
[2] 15% discount rate less assumed 4% long-term growth rate												
53%												

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 11% [2]
 Years of Delay 5 Years

Year	Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Subtotal	Years		Present Value
									A	B	
2016	0	1	\$ 83,000					\$ 83,000			\$ 83,000
2017	0.5	0.95	257,000	\$ 83,000				340,000			322,714
2018	1.5	0.86	746,000	257,000	\$ 83,000			1,086,000			928,636
2019	2.5	0.77	1,156,000	746,000	257,000	\$ 83,000		2,242,000			1,727,142
2020	3.5	0.69	1,378,000	1,156,000	746,000	257,000	\$ 83,000	3,620,000			2,512,338
2021	4.5	0.63	1,486,000	1,378,000	1,156,000	746,000	257,000	5,023,000			3,140,579
2022	5.5	0.56	1,425,000	1,486,000	1,378,000	1,156,000	746,000	6,191,000			3,487,261
2023	6.5	0.51	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	7,096,000			3,600,926
2024	7.5	0.46	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	7,409,000			3,387,172
2025	8.5	0.41	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	7,295,000			3,004,554
2026	9.5	0.37	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	6,939,000			2,574,712
2027	10.5	0.33	967,000	1,130,000	1,264,000	1,469,000	1,651,000	6,481,000			2,166,460
2028	11.5	0.30	829,000	967,000	1,130,000	1,264,000	1,469,000	5,659,000			1,704,219
2029	12.5	0.27	708,000	829,000	967,000	1,130,000	1,264,000	4,898,000			1,328,867
2030	13.5	0.24	516,000	708,000	829,000	967,000	1,130,000	4,150,000			1,014,350
2031	14.5	0.22	416,000	516,000	708,000	829,000	967,000	3,436,000			756,606
2032	15.5	0.20	374,000	416,000	516,000	708,000	829,000	2,843,000			563,989
2033	16.5	0.18	294,000	374,000	416,000	516,000	708,000	2,308,000			412,484
2034	17.5	0.16	283,000	294,000	374,000	416,000	516,000	1,883,000			303,178
2035	18.5	0.15	187,000	283,000	294,000	374,000	416,000	1,554,000			225,411
2036	19.5	0.13	175,000	187,000	283,000	294,000	374,000	1,313,000			171,580
2037	20.5	0.12		175,000	187,000	283,000	294,000	939,000			110,546
2038	21.5	0.11			175,000	187,000	283,000	645,000			68,409
2039	22.5	0.10				175,000	187,000	362,000			34,589
2040	23.5	0.09					175,000	175,000			15,064
Notes:								\$ 83,970,000			\$ 33,644,789
[1] Uses mid-year convention											60%
[2] 15% discount rate less assumed 4% long-term growth rate											

[1] Uses mid-year convention

[2] 15% discount rate less assumed 4% long-term growth rate

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 11% [2]
 Years of Delay 6 Years

Year	Years Discounted	PV Factor [1]	A						B		C		D = sum B:C		E = A * D	
			Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Subtotal	Present Value						
2017	0.5	0.95	\$ 83,000						\$ 83,000	\$ 78,780						
2018	1.5	0.86	257,000	\$ 83,000					340,000	290,733						
2019	2.5	0.77	746,000	257,000	\$ 83,000				1,086,000	836,609						
2020	3.5	0.69	1,156,000	746,000	257,000	\$ 83,000			2,242,000	1,555,984						
2021	4.5	0.63	1,378,000	1,156,000	746,000	257,000	\$ 83,000		3,620,000	2,263,368						
2022	5.5	0.56	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	5,106,000	2,876,103						
2023	6.5	0.51	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	6,448,000	3,272,093						
2024	7.5	0.46	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	7,842,000	3,585,127						
2025	8.5	0.41	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	8,565,000	3,527,622						
2026	9.5	0.37	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	8,673,000	3,218,111						
2027	10.5	0.33	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	8,425,000	2,816,298						
2028	11.5	0.30	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	7,906,000	2,380,908						
2029	12.5	0.27	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	7,310,000	1,983,262						
2030	13.5	0.24	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	6,367,000	1,556,233						
2031	14.5	0.22	516,000	708,000	829,000	967,000	1,130,000	1,264,000	5,414,000	1,192,161						
2032	15.5	0.20	416,000	516,000	708,000	829,000	967,000	1,130,000	4,566,000	905,795						
2033	16.5	0.18	374,000	416,000	516,000	708,000	829,000	967,000	3,810,000	680,920						
2034	17.5	0.16	294,000	374,000	416,000	516,000	708,000	829,000	3,137,000	505,083						
2035	18.5	0.15	283,000	294,000	374,000	416,000	516,000	708,000	2,591,000	375,831						
2036	19.5	0.13	187,000	283,000	294,000	374,000	416,000	516,000	2,070,000	270,503						
2037	20.5	0.12	175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	203,551						
2038	21.5	0.11		175,000	187,000	283,000	294,000	374,000	1,313,000	139,258						
2039	22.5	0.10			175,000	187,000	283,000	294,000	939,000	89,722						
2040	23.5	0.09				175,000	187,000	283,000	645,000	55,523						
2041	24.5	0.08					175,000	187,000	362,000	28,073						
2042	25.5	0.07						175,000	175,000	12,226						

Notes:

[1] Uses mid-year convention

[2] 15% discount rate less assumed 4% long-term growth rate

\$ 100,764,000 \$ 34,699,877

66%

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 11% [2]
 Years of Delay 7 Years

Year	Years Discounted	PV Factor [1]	A							B		C		D = sum B:C	E = A * D
			Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Subtotal	Present Value				
2018	1.5	0.86	\$ 83,000							\$ 83,000	\$ 70,973				
2019	2.5	0.77	257,000	\$ 83,000							340,000	261,922			
2020	3.5	0.69	746,000	257,000	\$ 83,000						1,086,000	753,702			
2021	4.5	0.63	1,156,000	746,000	257,000	\$ 83,000					2,242,000	1,401,788			
2022	5.5	0.56	1,378,000	1,156,000	746,000	257,000	\$ 83,000				3,620,000	2,039,070			
2023	6.5	0.51	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			5,106,000	2,591,084			
2024	7.5	0.46	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		6,531,000	2,985,777			
2025	8.5	0.41	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000		8,099,000	3,335,693			
2026	9.5	0.37	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000		9,311,000	3,454,841			
2027	10.5	0.33	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000		9,829,000	3,285,625			
2028	11.5	0.30	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000		9,803,000	2,952,193			
2029	12.5	0.27	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000		9,392,000	2,548,126			
2030	13.5	0.24	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000		8,735,000	2,135,024			
2031	14.5	0.22	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000		8,018,000	1,765,562			
2032	15.5	0.20	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000		6,883,000	1,365,437			
2033	16.5	0.18	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000		5,830,000	1,041,932			
2034	17.5	0.16	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000		4,940,000	795,380			
2035	18.5	0.15	294,000	374,000	416,000	516,000	708,000	829,000	967,000		4,104,000	595,295			
2036	19.5	0.13	283,000	294,000	374,000	416,000	516,000	708,000	829,000		3,420,000	446,918			
2037	20.5	0.12	187,000	283,000	294,000	374,000	416,000	516,000	708,000		2,778,000	327,048			
2038	21.5	0.11	175,000	187,000	283,000	294,000	374,000	416,000	516,000		2,245,000	238,107			
2039	22.5	0.10		175,000	187,000	283,000	294,000	374,000	416,000		1,729,000	165,207			
2040	23.5	0.09			175,000	187,000	283,000	294,000	374,000		1,313,000	113,025			
2041	24.5	0.08				175,000	187,000	283,000	294,000		939,000	72,820			
2042	25.5	0.07					175,000	187,000	283,000		645,000	45,063			
2043	26.5	0.06						175,000	187,000		362,000	22,785			
2044	27.5	0.06							175,000		175,000	9,923			

Notes:

\$ 117,558,000 \$ 34,820,319

70%

[1] Uses mid-year convention

[2] 15% discount rate less assumed 4% long-term growth rate

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 8% [2]
 Years of Delay 4 Years

Year	Years		Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Subtotal	Present Value	<i>C</i>	<i>D = sum B:C</i>	<i>E = A * D</i>
	A	B											
2015	0	1	\$ 83,000						\$ 83,000	\$ 83,000			
2016	0	1	\$ 257,000	\$ 83,000					\$ 340,000	\$ 340,000			
2017	0.5	0.96	\$ 746,000	\$ 257,000	\$ 83,000				\$ 1,086,000	\$ 1,045,004			
2018	1.5	0.89	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000			\$ 2,242,000	\$ 1,997,561			
2019	2.5	0.82	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000		\$ 3,537,000	\$ 2,917,935			
2020	3.5	0.76	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000		\$ 4,766,000	\$ 3,640,583			
2021	4.5	0.71	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000		\$ 5,445,000	\$ 3,851,155			
2022	5.5	0.65	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000		\$ 5,940,000	\$ 3,890,055			
2023	6.5	0.61	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000		\$ 6,031,000	\$ 3,657,084			
2024	7.5	0.56	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000		\$ 5,809,000	\$ 3,261,544			
2025	8.5	0.52	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000		\$ 5,514,000	\$ 2,866,585			
2026	9.5	0.48	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000		\$ 4,830,000	\$ 2,324,992			
2027	10.5	0.45	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000		\$ 4,190,000	\$ 1,867,517			
2028	11.5	0.41	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000		\$ 3,634,000	\$ 1,499,725			
2029	12.5	0.38	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000		\$ 3,020,000	\$ 1,154,011			
2030	13.5	0.35	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000		\$ 2,469,000	\$ 873,575			
2031	14.5	0.33	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000		\$ 2,014,000	\$ 659,804			
2032	15.5	0.30	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000		\$ 1,600,000	\$ 485,346			
2033	16.5	0.28	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000		\$ 1,367,000	\$ 383,952			
2034	17.5	0.26	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000		\$ 1,138,000	\$ 295,956			
2035	18.5	0.24	\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000		\$ 939,000	\$ 226,113			
2036	19.5	0.22		\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000		\$ 645,000	\$ 143,812			
2037	20.5	0.21			\$ 175,000	\$ 187,000	\$ 283,000		\$ 362,000	\$ 74,735			
2038	21.5	0.19				\$ 175,000	\$ 187,000		\$ 175,000	\$ 33,452			
Notes:												\$ 67,176,000	\$ 37,573,497
[1] Uses mid-year convention													44%
[2] 12% discount rate less assumed 4% long-term growth rate													

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 8% [2]
 Years of Delay 5 Years

Year	Discounted	PV Factor [1]	Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Subtotal	Years		Present Value
									A	B	
2016	0	1	\$ 83,000					\$ 83,000			\$ 83,000
2017	0.5	0.96	257,000	\$ 83,000				340,000			327,165
2018	1.5	0.89	746,000	257,000	\$ 83,000			1,086,000			967,596
2019	2.5	0.82	1,156,000	746,000	257,000	\$ 83,000		2,242,000			1,849,593
2020	3.5	0.76	1,378,000	1,156,000	746,000	257,000	\$ 83,000	3,620,000			2,765,193
2021	4.5	0.71	1,486,000	1,378,000	1,156,000	746,000	257,000	5,023,000			3,552,682
2022	5.5	0.65	1,425,000	1,486,000	1,378,000	1,156,000	746,000	6,191,000			4,054,433
2023	6.5	0.61	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	7,096,000			4,302,880
2024	7.5	0.56	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	7,409,000			4,159,886
2025	8.5	0.52	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	7,295,000			3,792,481
2026	9.5	0.48	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	6,939,000			3,340,190
2027	10.5	0.45	967,000	1,130,000	1,264,000	1,469,000	1,651,000	6,481,000			2,888,634
2028	11.5	0.41	829,000	967,000	1,130,000	1,264,000	1,469,000	5,659,000			2,335,428
2029	12.5	0.38	708,000	829,000	967,000	1,130,000	1,264,000	4,898,000			1,871,638
2030	13.5	0.35	516,000	708,000	829,000	967,000	1,130,000	4,150,000			1,468,343
2031	14.5	0.33	416,000	516,000	708,000	829,000	967,000	3,436,000			1,125,664
2032	15.5	0.30	374,000	416,000	516,000	708,000	829,000	2,843,000			862,400
2033	16.5	0.28	294,000	374,000	416,000	516,000	708,000	2,308,000			648,252
2034	17.5	0.26	283,000	294,000	374,000	416,000	516,000	1,883,000			489,705
2035	18.5	0.24	187,000	283,000	294,000	374,000	416,000	1,554,000			374,207
2036	19.5	0.22	175,000	187,000	283,000	294,000	374,000	1,313,000			292,753
2037	20.5	0.21		175,000	187,000	283,000	294,000	939,000			193,856
2038	21.5	0.19			175,000	187,000	283,000	645,000			123,296
2039	22.5	0.18				175,000	187,000	362,000			64,073
2040	23.5	0.16					175,000	175,000			28,680
Notes:								\$ 83,970,000			\$ 41,962,027
[1] Uses mid-year convention											50%
[2] 12% discount rate less assumed 4% long-term growth rate											

[1] Uses mid-year convention

[2] 12% discount rate less assumed 4% long-term growth rate

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 8% [2]
 Years of Delay 6 Years

Year	Years Discounted	PV Factor [1]	A						B		C		D = sum B:C		E = A * D	
			Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Subtotal	Present Value						
2017	0.5	0.96	\$ 83,000						\$ 83,000	\$ 79,867						
2018	1.5	0.89	257,000	\$ 83,000					340,000	302,931						
2019	2.5	0.82	746,000	257,000	\$ 83,000				1,086,000	895,922						
2020	3.5	0.76	1,156,000	746,000	257,000	\$ 83,000			2,242,000	1,712,586						
2021	4.5	0.71	1,378,000	1,156,000	746,000	257,000	\$ 83,000		3,620,000	2,560,364						
2022	5.5	0.65	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000	5,106,000	3,343,876						
2023	6.5	0.61	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	6,448,000	3,909,945						
2024	7.5	0.56	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	7,842,000	4,403,000						
2025	8.5	0.52	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	8,565,000	4,452,721						
2026	9.5	0.48	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	8,673,000	4,174,877						
2027	10.5	0.45	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	8,425,000	3,755,091						
2028	11.5	0.41	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	7,906,000	3,262,749						
2029	12.5	0.38	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	7,310,000	2,793,318						
2030	13.5	0.35	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	6,367,000	2,252,756						
2031	14.5	0.33	516,000	708,000	829,000	967,000	1,130,000	1,264,000	5,414,000	1,773,674						
2032	15.5	0.30	416,000	516,000	708,000	829,000	967,000	1,130,000	4,566,000	1,385,057						
2033	16.5	0.28	374,000	416,000	516,000	708,000	829,000	967,000	3,810,000	1,070,121						
2034	17.5	0.26	294,000	374,000	416,000	516,000	708,000	829,000	3,137,000	815,828						
2035	18.5	0.24	283,000	294,000	374,000	416,000	516,000	708,000	2,591,000	623,919						
2036	19.5	0.22	187,000	283,000	294,000	374,000	416,000	516,000	2,070,000	461,538						
2037	20.5	0.21	175,000	187,000	283,000	294,000	374,000	416,000	1,729,000	356,951						
2038	21.5	0.19		175,000	187,000	283,000	294,000	374,000	1,313,000	250,989						
2039	22.5	0.18			175,000	187,000	283,000	294,000	939,000	166,200						
2040	23.5	0.16				175,000	187,000	283,000	645,000	105,706						
2041	24.5	0.15					175,000	187,000	362,000	54,932						
2042	25.5	0.14						175,000	175,000	24,589						

Notes:

[1] Uses mid-year convention

[2] 12% discount rate less assumed 4% long-term growth rate

\$ 100,764,000 \$ 44,989,505

55%

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 8% [2]
 Years of Delay 7 Years

Year	Years Discounted	PV Factor [1]	A		B							C		D = sum B:C		E = A * D	
			Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Subtotal	Present Value						
2018	1.5	0.89	\$ 83,000							\$ 83,000	\$ 73,951						
2019	2.5	0.82	257,000	\$ 83,000							340,000	280,491					
2020	3.5	0.76	746,000	257,000	\$ 83,000						1,086,000	829,558					
2021	4.5	0.71	1,156,000	746,000	257,000	\$ 83,000					2,242,000	1,585,728					
2022	5.5	0.65	1,378,000	1,156,000	746,000	257,000	\$ 83,000				3,620,000	2,370,707					
2023	6.5	0.61	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			5,106,000	3,096,181					
2024	7.5	0.56	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		6,531,000	3,666,921					
2025	8.5	0.52	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000		8,099,000	4,210,459					
2026	9.5	0.48	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000		9,311,000	4,481,988					
2027	10.5	0.45	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000		9,829,000	4,380,865					
2028	11.5	0.41	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000		9,803,000	4,045,627					
2029	12.5	0.38	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000		9,392,000	3,588,898					
2030	13.5	0.35	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000		8,735,000	3,090,596					
2031	14.5	0.33	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000		8,018,000	2,626,767					
2032	15.5	0.30	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000		6,883,000	2,087,899					
2033	16.5	0.28	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000		5,830,000	1,637,482					
2034	17.5	0.26	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000		4,940,000	1,284,728					
2035	18.5	0.24	294,000	374,000	416,000	516,000	708,000	829,000	967,000		4,104,000	988,252					
2036	19.5	0.22	283,000	294,000	374,000	416,000	516,000	708,000	829,000		3,420,000	762,540					
2037	20.5	0.21	187,000	283,000	294,000	374,000	416,000	516,000	708,000		2,778,000	573,516					
2038	21.5	0.19	175,000	187,000	283,000	294,000	374,000	416,000	516,000		2,245,000	429,147					
2039	22.5	0.18		175,000	187,000	283,000	294,000	374,000	416,000		1,729,000	306,028					
2040	23.5	0.16			175,000	187,000	283,000	294,000	374,000		1,313,000	215,182					
2041	24.5	0.15				175,000	187,000	283,000	294,000		939,000	142,490					
2042	25.5	0.14					175,000	187,000	283,000		645,000	90,626					
2043	26.5	0.13						175,000	187,000		362,000	47,095					
2044	27.5	0.12							175,000		175,000	21,081					

Notes:

\$ 117,558,000 \$ 46,914,804

60%

[1] Uses mid-year convention

[2] 12% discount rate less assumed 4% long-term growth rate

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 3.5% [2]
 Years of Delay 8 Years

Year	Discounted	PV Factor	[1]	Years								C	D = sum B:C	E = A * D
				A		B		C		D				
				Cultivar#1	Cultivar#2	Cultivar#3	Cultivar#4	Cultivar#5	Cultivar#6	Cultivar#7	Cultivar#8	Subtotal	Present Value	
2019	2.5	0.92	\$ 83,000									\$ 83,000	\$ 76,160	
2020	3.5	0.89	257,000	\$ 83,000								340,000	301,431	
2021	4.5	0.86	746,000	257,000	\$ 83,000							1,086,000	930,247	
2022	5.5	0.83	1,156,000	746,000	257,000	\$ 83,000						2,242,000	1,855,512	
2023	6.5	0.80	1,378,000	1,156,000	746,000	257,000	\$ 83,000					3,620,000	2,894,652	
2024	7.5	0.77	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000				5,106,000	3,944,829	
2025	8.5	0.75	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000			6,531,000	4,875,136	
2026	9.5	0.72	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000	\$ 83,000		8,182,000	5,901,007	
2027	10.5	0.70	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000	257,000		9,568,000	6,667,262	
2028	11.5	0.67	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000	746,000		10,575,000	7,119,776	
2029	12.5	0.65	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000	1,156,000		10,959,000	7,128,802	
2030	13.5	0.63	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000	1,378,000		10,770,000	6,768,945	
2031	14.5	0.61	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000	1,486,000		10,221,000	6,206,665	
2032	15.5	0.59	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000	1,425,000		9,443,000	5,540,316	
2033	16.5	0.57	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000	1,651,000		8,534,000	4,837,677	
2034	17.5	0.55	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000	1,469,000		7,299,000	3,997,673	
2035	18.5	0.53	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000	1,264,000		6,204,000	3,283,034	
2036	19.5	0.51	294,000	374,000	416,000	516,000	708,000	829,000	967,000	1,130,000		5,234,000	2,676,066	
2037	20.5	0.49	283,000	294,000	374,000	416,000	516,000	708,000	829,000	967,000		4,387,000	2,167,157	
2038	21.5	0.48	187,000	283,000	294,000	374,000	416,000	516,000	708,000	829,000		3,607,000	1,721,586	
2039	22.5	0.46	175,000	187,000	283,000	294,000	374,000	416,000	516,000	708,000		2,953,000	1,361,776	
2040	23.5	0.45		175,000	187,000	283,000	294,000	374,000	416,000	516,000		2,245,000	1,000,272	
2041	24.5	0.43			175,000	187,000	283,000	294,000	374,000	416,000		1,729,000	744,314	
2042	25.5	0.42				175,000	187,000	283,000	294,000	374,000		1,313,000	546,117	
2043	26.5	0.40					175,000	187,000	283,000	294,000		939,000	377,352	
2044	27.5	0.39						175,000	187,000	283,000		645,000	250,438	
2045	28.5	0.38							175,000	187,000		362,000	135,803	
2046	29.5	0.36								175,000		175,000	63,430	
Notes:												\$ 134,352,000	\$ 83,373,435	38%

[1] Uses mid-year convention

[2] 7.5% discount rate less assumed 4% long-term growth rate

California Berry Cultivars vs. University of California**Exhibit 8: Lost Revenue Model**

Alternate Trend Analysis Projections

Net Discount Rate 16% [2]
 Years of Delay 8 Years

Year	Discounted	PV Factor	[1]	Years								C	D = sum B:C	E = A * D																									
				A		B		Cultivar#1		Cultivar#2		Cultivar#3		Cultivar#4		Cultivar#5		Cultivar#6		Cultivar#7		Cultivar#8		Subtotal		Present Value													
2019	2.5	0.69	\$ 83,000																				\$ 83,000	\$ 57,271															
2020	3.5	0.59	\$ 257,000	\$ 83,000																				\$ 340,000	202,244														
2021	4.5	0.51	\$ 746,000	\$ 257,000	\$ 83,000																			\$ 1,086,000	556,889														
2022	5.5	0.44	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000																		\$ 2,242,000	991,098														
2023	6.5	0.38	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000																	\$ 3,620,000	1,379,532														
2024	7.5	0.33	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000																\$ 5,106,000	1,677,436														
2025	8.5	0.28	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000															\$ 6,531,000	1,849,638														
2026	9.5	0.24	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000														\$ 8,182,000	1,997,600														
2027	10.5	0.21	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000													\$ 9,568,000	2,013,781														
2028	11.5	0.18	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000												\$ 10,575,000	1,918,728														
2029	12.5	0.16	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000											\$ 10,959,000	1,714,139														
2030	13.5	0.13	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000										\$ 10,770,000	1,452,221														
2031	14.5	0.12	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000									\$ 10,221,000	1,188,099														
2032	15.5	0.10	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 9,443,000	946,261														
2033	16.5	0.09	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 8,534,000	737,218													
2034	17.5	0.07	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 7,299,000	543,561												
2035	18.5	0.06	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 6,204,000	398,290											
2036	19.5	0.06	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 5,234,000	289,670										
2037	20.5	0.05	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 4,387,000	209,305									
2038	21.5	0.04	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 3,607,000	148,354								
2039	22.5	0.04	\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 2,953,000	104,703							
2040	23.5	0.03		\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 2,245,000	68,620						
2041	24.5	0.03			\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 1,729,000	45,559					
2042	25.5	0.02				\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 1,313,000	29,825				
2043	26.5	0.02					\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 939,000	18,388			
2044	27.5	0.02						\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 645,000	10,888		
2045	28.5	0.01							\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 362,000	5,268	
2046	29.5	0.01								\$ 175,000	\$ 187,000	\$ 283,000	\$ 294,000	\$ 374,000	\$ 416,000	\$ 516,000	\$ 708,000	\$ 829,000	\$ 967,000	\$ 1,130,000	\$ 1,264,000	\$ 1,469,000	\$ 1,651,000	\$ 1,425,000	\$ 1,486,000	\$ 1,378,000	\$ 1,156,000	\$ 746,000	\$ 257,000	\$ 83,000								\$ 175,000	2,195

Notes:

[1] Uses mid-year convention

[2] 20% discount rate less assumed 4% long-term growth rate

\$ 134,352,000 \$ 20,556,783

85%

EXHIBIT B

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4
5 CALIFORNIA BERRY CULTIVARS,)
6 LLC,)
7 Plaintiffs,)
8 vs.)
9 THE REGENTS OF THE UNIVERSITY)
10 OF CALIFORNIA,)
11 Defendant.)
12 _____)
13 and Related Claims.)
14)
Case No. 3:16-cv-02477
VC

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF MARY DELANY

San Francisco, California

Friday, December 9, 2016

Volume I

24 REPORTED BY:

25 REBECCA L. ROMANO, RPR, CSR No. 12546

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

Page 2

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4
5 CALIFORNIA BERRY CULTIVARS,)
6 LLC,)
7 Plaintiffs,)
8 vs.)
9 THE REGENTS OF THE UNIVERSITY)
10 OF CALIFORNIA,)
11 Defendant.)
12
13 and Related Claims.)
Case No. 3:16-cv-02477
VC

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

Page 163

1 became aware -- yeah, the -- yes.

2 Q. Did you also learn that the process of
3 moving from that initial cross-breeding activity to
4 the release of a new, valuable patentable cultivar
5 was a process that took somewhere between five,
6 seven, eight years, something like that?

7 A. Yes.

8 Q. And did you also learn that as a part of
9 that process, the breeder would start with a large
10 number of plants and, each year, reduce that number
11 down until they found a variety that they believed
12 was valuable and patentable?

13 A. Yeah.

14 MS. KREVANS: Same scope objection.

15 Q. (By Mr. Lippetz) And, again, these are
16 all in your individual capacity --

17 A. Right.

18 Q. -- to avoid objections.

19 MS. KREVANS: Okay. Great.

20 Q. (By Mr. Lippetz) When I say "you," for
21 these -- purposes of these questions, I mean --

22 A. Mary Delany, right.

23 Q. Now, I'm going to try this as a
24 university representative, but see where it goes.

25 Did the university -- does the university

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

Page 332

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF CONTRA COSTA)
3

4 I, Rebecca L. Romano, CSR. 12546, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was
9 administered the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel
19 for any party to said action, nor am I related to
20 any party to said action, nor am I in any way
21 interested in the outcome thereof.

22 IN WITNESS WHEREOF, I have subscribed my name
23 this 23rd day of December, 2016.

24

25

Rebecca L. Romano, RPR,
CSR. No 12546

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

Page 333

1 DEPOSITION ERRATA SHEET

2 Case Name: California Berry Cultivars, LLC v. The
3 Regents of the University of California
Name of Witness: Mary Delany, Ph.D.
Date of Deposition: December 9, 2016
4 Job No.: 120916-RRD

Reason Codes: 1. To clarify the record.
2. To conform to the facts.
3. To Correct transcript errors.

6 Page 55 Line 5 Reason (3)

7 From SITTING to SIFTING

8 Page 168 Line 21 Reason (3)

9 From the VIDEOPHAGER to the DEPONENT

10 Page 235 Line 7 Reason (3)

11 From THE VIDEOPHAGER to the DEPONENT

12 Page 245 Line 12 Reason (3)

13 From SITTING to SIFTING

14 Page 322 Line 14 Reason (3)

15 From Forward to Board

16 Page Line Reason

17 From to

18 Page Line Reason

19 From to

20 Page Line Reason

21 From to

22 Page Line Reason

23 From to

24 Page Line Reason

25 From to

Highly Confidential - Attorneys' Eyes Only
Mary Delany - December 9, 2016

Page 334

1 DEPOSITION ERRATA SHEET

2 Page ____ Line ____ Reason _____

3 From _____ to _____

4 Page ____ Line ____ Reason _____

5 From _____ to _____

6 Page ____ Line ____ Reason _____

7 From _____ to _____

8 Page ____ Line ____ Reason _____

9 From _____ to _____

10 Page ____ Line ____ Reason _____

11 From _____ to _____

12 Page ____ Line ____ Reason _____

13 From _____ to _____

14 Page ____ Line ____ Reason _____

15 From _____ to _____

16 Page ____ Line ____ Reason _____

17 From _____ to _____

18 Page ____ Line ____ Reason _____

19 From _____ to _____

20 Page ____ Line ____ Reason _____

21 From _____ to _____

22 (X) Subject to the above changes, I certify that
the transcript is true and correct

23 _____ No changes have been made. I certify that
the transcript is true and correct.

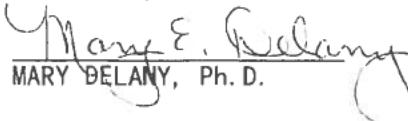
24
25 
MARY DELANY, Ph.D.

EXHIBIT C

REDACTED
VERSION
OF DOCUMENT
SOUGHT TO BE
SEALED

EXHIBIT D

Highly Confidential - Attorneys' Eyes Only
Steven Knapp Ph.D. - December 16, 2016

Page 1

15 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

17 VIDEO DEPOSITION OF STEVEN J. KNAPP, Ph.D.

18 San Francisco, California

19 Friday, December 16, 2016

20 Volume I

24 REPORTED BY:

25 REBECCA L. ROMANO, RPR, CSR No. 12546

Highly Confidential - Attorneys' Eyes Only
Steven Knapp Ph.D. - December 16, 2016

Page 2

16 DEPOSITION OF STEVEN J. KNAPP, Ph. D. ,
17 taken on behalf of the Plaintiff and
18 Cross-Defendants, at Morrison & Foerster LLP,
19 425 Market Street San Francisco, California,
20 commencing at 9:15 a.m. , Friday, December 16, 2016,
21 before Rebecca L. Romano, Certified Shorthand
22 Reporter No. 12546

Highly Confidential - Attorneys' Eyes Only
Steven Knapp Ph.D. - December 16, 2016

Page 242

1 A. There were 312, I believe, in that --
2 that Doug had, and there were some 290 or so that
3 were -- that we discovered in Irvine.

4 Q. So 3 -- 312 2012s up north and 290 2012s
5 from south?

6 A. Right.

7 Q. And so that is?

8 A. About 600, 601.

9 Q. 602.

10 A. Yeah.

11 Q. So you have discarded approximately 400
12 of the 2012 genotypes?

13 A. Right.

14 Q. Do you maintain any -- any copies of the
15 genotypes you've discarded?

16 A. No.

17 Q. So those 400 are just gone from the
18 collection; is that correct?

19 A. Correct.

20 Q. Were any of those on the discard list
21 that Doug had left behind?

22 A. I believe so, yes.

23 Q. So, in essence, if you had followed
24 Doug's instructions and the evaluations he had
25 done, it would have saved you some work; is that

Highly Confidential - Attorneys' Eyes Only
Steven Knapp Ph.D. - December 16, 2016

Page 373

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF CONTRA COSTA)
3

4 I, Rebecca L. Romano, CSR. 12546, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was
9 administered the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel
19 for any party to said action, nor am I related to
20 any party to said action, nor am I in any way
21 interested in the outcome thereof.

22 IN WITNESS WHEREOF, I have subscribed my name
23 this 4th day of January, 2017.

24

25

Rebecca L. Romano, RPR,
CSR. No 12546

ERRATA SHEET

Case Title: California Berry Cultivars, LLC v. The Regents of the University of California (U.S.D.C. N.D. Cal. Case No. 3:16-cv-02477-VC)

Testimony of: Steven J. Knapp, Ph.D.

Date Taken: December 16, 2016

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcript errors.

Page 128 Line 20 – change “That’s correct.” to “That’s correct, although Julia Harshman worked on strawberries at University of Maryland as well.”

Reason: 1

Page 197 Line 60 – change “76” to “576”

Reason: 3

Page 202 Line 17 – change “Yes.” to “I don’t know.”

Reason: 2

Page 203 Line 4 – change “Yes.” to “No.”

Reason: 2

Page 204 Line 6 – change “No.” to “For the Scarlet that we have, which is a USDA plant introduction, we do not need a license because it is a publicly available European cultivar.”

Reason: 2

Page 207 Line 12 – change “allow head-to-head comparisons” to “allow head-to-head comparisons without a license”

Reason: 1

Page 207 Line 23 – change “Correct.” to “Correct. We are using the publicly available Scarlet variety.”

Reason: 2

Page 208 Line 18 – change “No, that wouldn’t be surprising to me.” to “No, that wouldn’t be surprising to me, so long as they had a test agreement.”

Reason: 1

Page 214 Line 25 – change “It was due to the use of high-elevation” to “Liz said it was due to the use of high-elevation”

Reason: 1

Page 215 Line 21 – change “the concern was” to “Liz’s concern was”

Reason: 1

Page 216 Line 19 – change “Correct.” to “I don’t know.”

Reason: 2

Page 216 Line 21 – change “Correct.” to “I don’t know.”

Reason: 2

Page 217 Line 16 – change “Yes, I believe.” to “Yes, I now believe.”

Reason: 1

Page 223 Line 13 – change “We chose to split the planting.” to “We originally chose to split the planting for reasons independent from Lassen. However, we did a second planting at Cedar Point after we had concerns about the relationship with Lassen.”

Reason: 2

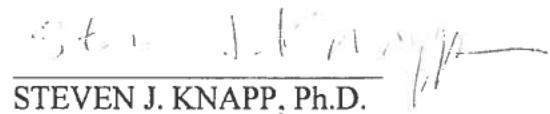
Page 224 Line 1 – change “That is correct.” to “That is correct, for the embryo within the seed only.”

Reason: 1

Page 353 Line 17 – change “Correct.” to “Correct, there is no longer a risk.”

Reason: 1

Subject to the above changes, I certify that the transcript is true and correct.



STEVEN J. KNAPP, Ph.D.

EXHIBIT E

From: Mary E. Delany <medelany@ucdavis.edu>
Sent: Monday, March 23, 2015 8:42 AM
To: Ag Kawamura
Cc: Jacob A Appelsmith; Steven J Knapp; Mary E. Delany; Helene R Dillard; Karl M Engelbach
Subject: RE: Opportunities for progress...transition cultivar time frame request 3-22-15

Dear AG,

Thank you for all the continuing conversation to this point. I do look forward to future interactions and I know the more you become involved with our new breeder and his developing program that you will come to believe there are great things ahead for strawberry agriculture.

I have thought much over the last few days of our recent conversations with Jacob and Karl on Thursday, and then by phone with you on Friday wherein I let you know that our decision stands that we will not be transferring the transition cultivars or strawberry germplasm (*writ large*) to CBC or to Dr. Shaw's as an employee of CBC under the current set of circumstances.

Also, I have to mention that I do not agree that it is '*just as simple as the two docs getting together alone in a room to work things out*'. The issues are far more involved than that simple solution suggests and I don't agree that such a meeting is worthy at this particular juncture. Dr. Knapp has numerous activities underway that we should all be very, very excited to see progress as quickly as possible.

I acknowledge your renewed request as outlined in your email below that we provide ~145 cultivar copies, but we will not be proceeding with such a transfer.

Dr. Knapp will be directing the multiplication of the cultivars during this season (expedited planning underway) and we welcome Dr. Shaw's and/or Dr. Larson's assistance and cooperation in the context of the UCD program.

Best,

Mary

Mary E. Delany, Ph.D.
Professor, Developmental Genetics
Fiddyment Endowed Chair in Agriculture
Department of Animal Science
and
Executive Associate Dean
College of Agricultural and Environmental Sciences
University of California, Davis
530-752-0233
medelany@ucdavis.edu

From: Ag Kawamura [mailto:ag.kawamura@ocproduce.com]
Sent: Friday, March 20, 2015 5:00 PM
To: Mary E. Delany; Steven J Knapp

Cc: Doug Shaw

Subject: Opportunities for progress...transition cultivar time frame request

Hello Mary and Steve,

Thank you both for your willingness to discuss with me the various issues and opportunities for progress! As a result of our discussions, one area of agreement we shared was acknowledging that the clock was ticking on the transition cultivars and that we should move forward at least with the physical planting of identified plant selections. In the ordinary course of Prof. Shaw's program he would have been planting these "spring" selections up at the Lassen Canyon Nursery. Since Prof. Knapp is planning cultivar plantings at the same nursery, I would like to request that you authorize a release of a copy of about 145 plants from the Department's collection to Prof. Shaw. Complete copies of the selected 145 plants would remain with the Department. Next week, Doug's team members could pick up the identified plants and move them to the Lassen Canyon Nursery facility at Manteca where they can be accounted for and cared for through Lassen staff protocols. I am making this request so that another year is not lost and that it would also create an atmosphere of cooperation!

A part of the timing challenge is that Prof. Shaw is leaving for Europe this weekend on a long planned trip. Steve, upon his return he will contact you and I am confident that all of you can agree on a collaborative work framework that would move our programs forward. I was excited to know that your good focus on preserving and enhancing the germplasm collection is yet another example of investing in the future viability of our strawberry industry! We certainly do need to keep seeking solutions as we have some very serious cultural challenges ahead of us. Thank you and please advise at your earliest convenience. Best regards, AG

EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

4 CALIFORNIA BERRY)
5 CULTIVARS, LLC,)
6 Plaintiff,)
7 vs.) NO. 3:16-cv-02477-VC
8 THE REGENTS OF THE)
9 UNIVERSITY OF)
10 CALIFORNIA, a)
corporation,)
11 Defendant.)
12 -----)
13 THE REGENTS OF THE)
14 UNIVERSITY OF)
15 CALIFORNIA, a)
corporation,)
16 Cross-Complainant,)
17 vs.)
18 CALIFORNIA BERRY)
19 CULTIVARS, LLC, DOUGLAS)
SHAW, and KIRK LARSON,)
Cross-Defendants.)
19)

CONFIDENTIAL TRANSCRIPT

VIDEOTAPED DEPOSITION OF DAVID NOLTE
21 Los Angeles, California
22 Tuesday, March 14, 2017

Reported by:
23 LORI M. BARKLEY
 CSR No. 6426
24 Job No. 2556145
25 PAGES 1 - 135

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

4 CALIFORNIA BERRY)
5 CULTIVARS, LLC,)
6 Plaintiff,)
7 vs.) No. 3:16-cv-02477-VC
8 THE REGENTS OF THE)
9 UNIVERSITY OF)
10 CALIFORNIA, a)
11 corporation,)
12 Defendant.)
13 _____)
14 THE REGENTS OF THE)
15 UNIVERSITY OF)
16 CALIFORNIA, a)
17 corporation,)
18 Cross-Complainant,)
19 vs.)
20 CALIFORNIA BERRY)
21 CULTIVARS, LLC, DOUGLAS)
22 SHAW, and KIRK LARSON,)
23 Cross-Defendants.)
24 _____)

20 Videotaped Deposition of DAVID NOLTE,
21 Volume I, taken on behalf of Defendants, at 555 South
22 Flower Street, 50th Floor, Los Angeles, California,
23 beginning at 9:11 a.m., and ending at 2:02 p.m., on
24 Tuesday, March 14, 2017, before LORI M. BARKLEY,
25 Certified Shorthand Reporter No. 6426.

1	Is that true, sir?	09:39:22
2	MS. SMITH: Objection, assumes facts not in	09:39:23
3	evidence, calls for speculation, lack of foundation.	09:39:25
4	THE WITNESS: Yeah. I obviously don't	09:39:27
5	understand what you're saying. What I'm trying to	09:39:29
6	communicate here is that there's an -- an eight-year	09:39:31
7	delay that has occurred starting from 2019. And if	09:39:34
8	you're saying there's not an eight-year delay, then	09:39:41
9	you can change the calculations, but the calculations	09:39:43
10	are premised on an eight-year delay, or a cultivar is	09:39:45
11	being missed and a starting point I was given was the	09:39:53
12	year that you mentioned in 2019.	09:39:56
13	And if -- and that's what the calculations	09:40:00
14	are doing, they're consistent with what I just	09:40:03
15	described.	09:40:06
16	BY MR. OVERSON:	09:40:07
17	Q. I see.	09:40:07
18	So your eight-year delay starts in 2019; is	09:40:08
19	that true, sir?	09:40:12
20	A. The royalties actually get received the	09:40:15
21	following year, but yes.	09:40:16
22	Q. So you're assuming that the delay would push	09:40:18
23	out CBC from receiving any royalties until 2027; is	09:40:25
24	that true?	09:40:32
25	MS. SMITH: Objection, assumes facts not in	09:40:39

1	BY MR. OVERSON:	10:03:29
2	Q. What do you mean when the say "the years	10:03:29
3	four, five, six, seven, eight are correct"?	10:03:31
4	A. Well, there's -- there's two things shown in	10:03:33
5	that column, and I was reading to you part, or call	10:03:35
6	it half, of the label in table 2, and it's clear from	10:03:41
7	your questioning that I should revisit the labels of	10:03:46
8	the number of years, but -- but what this calculation	10:03:51
9	does is addresses the impact of reducing the -- how	10:03:58
10	long it takes to develop a cultivar and how many	10:04:04
11	cultivars are missing.	10:04:07
12	Q. Can I ask you to turn back to Exhibit 1,	10:04:10
13	which is your first report, and I'm looking at page 3	10:04:48
14	of 8 of Exhibit 1 and specifically at paragraph 2,	10:04:50
15	which has the entry, first sentence (as read):	10:04:57
16	The following nine cultivars were	10:05:00
17	developed by Drs. Shaw and Larson	10:05:02
18	and have at least five years of	10:05:05
19	licensing history.	10:05:07
20	And then there's a listing of nine names of	10:05:12
21	cultivars. Where did you get these cultivars from?	10:05:14
22	A. I note a U.C. document that identifies	10:05:21
23	these. The timing or identification of cultivars in	10:05:29
24	which only Dr. Shaw and Larson were involved were	10:05:37
25	provided by Dr. Shaw.	10:05:41

1	Q. Why did you mention only Dr. Shaw and Larson	10:05:53
2	involved? You're saying there are other cultivars	10:05:56
3	that have other co-inventors and you excluded those	10:05:58
4	or --	10:06:02
5	A. Correct.	10:06:02
6	Q. And so is it correct that Dr. Shaw	10:06:02
7	identified these nine as the one you should orient	10:06:06
8	on?	10:06:11
9	A. I would not agree with what you are	10:06:11
10	describing, the way you said it. I mean, there's no	10:06:13
11	doubt that I had a conversation with Dr. Shaw and the	10:06:16
12	result of the conversation were that these nine were	10:06:20
13	identified, but it's not quite the way your question,	10:06:23
14	it was phrased.	10:06:27
15	Q. Did you have -- you're aware that there are	10:06:28
16	many, many more cultivars that were commercialized by	10:06:31
17	Dr. Shaw and Larson when they were at U.C. beyond	10:06:36
18	these nine, true?	10:06:40
19	A. There were --	10:06:43
20	MS. SMITH: Objection, vague.	10:06:44
21	THE WITNESS: There are cultivars that	10:06:48
22	occurred subsequently, for which there was less than	10:06:49
23	five years of history, and there were cultivars	10:06:53
24	before that time, for which other breeders were also	10:06:56
25	involved, and so that's a longer way of agreeing with	10:07:01

1 STATE OF CALIFORNIA) ss.

2 COUNTY OF LOS ANGELES)

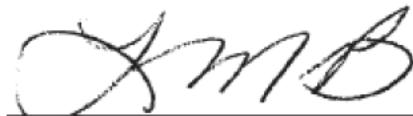
3
4 I, Lori M. Barkley, CSR No. 6426, do hereby
5 certify:

6 That the foregoing deposition testimony
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me, and
13 were thereafter transcribed under my direction and
14 supervision, and that the foregoing pages contain a
15 full, true and accurate record of all proceedings and
16 testimony to the best of my skill and ability.

17 I further certify that I am neither counsel
18 for any party to said action, nor am I related to any
19 party to said action, nor am I in any way interested
20 in the outcome thereof.

21 IN WITNESS WHEREOF, I have subscribed my
22 name this 28th day of March, 2017.

23
24 
25

LORI M. BARKLEY, CSR No. 6426